

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

)
UNITED STATES OF AMERICA,)
Plaintiff,)
)
vs.)
) Criminal Action
BARRY SPENCER,) No. 13-10196-RWZ
Defendant.)
)
)
)

**JURY TRIAL
DAY ONE**

BEFORE THE HONORABLE RYA W. ZOBEL
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
John J. Moakley U.S. Courthouse
Boston, Massachusetts 02210
June 16, 2014
9:00 a.m.

* * * *

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Official Court Reporter
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SRGT. DET. DONALD KEENAN

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By Mr. Wortmann: 90

By Mr. Butters: --

1 P R O C E E D I N G S

2 (The following proceedings were held in open court
3 before the Honorable Rya W. Zobel, United States District Judge,
4 United States District Court, District of Massachusetts, at the
5 John J. Moakley United States Courthouse, 1 Courthouse Way,
6 Boston, Massachusetts, on June 16, 2014.

7 The defendant Barry Spencer is present with counsel.
8 Assistant United States Attorney John A. Wortmann, Jr., is
9 present.)

10 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY:

11 THE COURT: Mr. Butters, you need not put on your
12 coat for this purpose.

13 MR. WORTMANN: Thanks.

14 THE COURT: Well, neither do you, Mr. Wortmann.

15 COURTROOM DEPUTY CLERK URSO: This is the United
16 States versus Barry Spencer. It's Criminal 13-10196. If
17 counsel could just identify themselves for the record, please.

18 MR. WORTMANN: Your Honor, John Wortmann for the
19 United States. Good morning.

20 MR. BUTTERS: Your Honor, good morning. Tom Butters
21 for Mr. Spencer.

22 THE COURT: It's good to see you.

23 MR. BUTTERS: Good to see you, too.

24 THE COURT: How much progress have you made to being
25 standby counsel and being actual counsel?

1 MR. BUTTERS: Well, I convinced Mr. Spencer that I
2 would do a better job at the trial than he would.

3 THE COURT: He believes it?

4 MR. BUTTERS: Well, I'm very persuasive, as you know.

5 THE COURT: I know. Although my recollection is the
6 last case it took about a day or two before your client just
7 departed and let you do it.

8 MR. BUTTERS: I remember that one.

9 So, I think that he's going to let me conduct the
10 trial and -- but I don't know. He's a little bit hard to
11 predict. So -- but I think that we have a game plan and he's
12 going to let me do what we've agreed that I should do.

13 THE COURT: If we impanel 13 jurors -- I think I need
14 to review the charge -- I mean, the questions with him anyhow.
15 Yes, he needs to be here for that.

16 Lisa, do we have any idea when the sheriff is going
17 to bring him?

18 COURTROOM DEPUTY CLERK URSO: No. I just called Matt
19 downstairs in the Marshal's Office and he said they said by
20 10:30, but he'll call me to let me know.

21 MR. WORTMANN: Your Honor, I spoke to Mr. McLear on
22 Friday. It sounds like that's about the earliest that we
23 would get a jury panel up here anyway because of Judge Saris'
24 case.

25 COURTROOM DEPUTY CLERK URSO: Judge Saris has a huge

1 trial. So...

2 THE COURT: I'm junior to her now, so I should get
3 first bids on the jury. We have this seniority arrangement,
4 that criminal cases go first and civil cases go second and
5 within each category the most junior judge gets to go first.

6 MR. WORTMANN: Your Honor --

7 THE COURT: By virtue of being senior, I'm at the
8 bottom of the list now.

9 MR. WORTMANN: I think Mr. Butters' and my discretion
10 is the better part valor and won't join in this conversation.

11 THE COURT: I'm sorry?

12 MR. WORTMANN: I said we won't join in this
13 conversation.

14 Your Honor, one thing -- I spoke to Mr. Gonza
15 (phonetic) during the week just to make sure that the habe got
16 issued and I suppose we should make sure that the habe is
17 issued for the duration of the trial.

18 COURTROOM DEPUTY CLERK URSO: I know. I did issue
19 the habe. It wasn't on the docket, but I did speak to the
20 marshals, but I told them I would tell them today how long,
21 because they wanted to -- they're like, well, put two weeks
22 down. I said, well, I was going to talk to you guys today and
23 see how long. So, I'll do it for like Thursday.

24 MR. WORTMANN: Yes, I think that --

25 COURTROOM DEPUTY CLERK URSO: Right, just to make

1 sure.

2 MR. WORTMANN: He'll stay closer.

3 COURTROOM DEPUTY CLERK URSO: Right, I have that. I
4 already spoke to them. I have that under control.

5 THE COURT: Is the case likely to go to the jury
6 tomorrow?

7 MR. WORTMANN: Yes, I think -- well, I think it
8 really depends -- I've got two witnesses here today that
9 should be, you know, an hour direct total and I'm sure about
10 the same on cross.

11 MR. BUTTERS: Or less. Less is more.

12 MR. WORTMANN: And then three witnesses tomorrow who
13 are -- the first two are fairly short, will be 15- or 20-
14 minute witnesses, and then the chemist, who is probably half
15 an hour. So, you know, even if we got started late today,
16 your Honor, and we get through only one of those witnesses, I
17 still think we have a pretty good chance of finishing up --

18 THE COURT: But the case would go to the jury on
19 Wednesday, then.

20 MR. WORTMANN: Yes, that's probably right.

21 THE COURT: I think that means, Lisa, that we need to
22 tell the Framingham people to come in at 2:00 and/or have -- I
23 guess it's better to have them come at 2:00 and then move
24 everything else back or however you want to arrange it. I
25 don't -- especially since we'll hear the motions tomorrow, but

1 they have some business to discuss. This is the multi-
2 district Framingham compounding case and I meet with them once
3 a week -- once a month to get an update of what's going on and
4 to -- they make very good suggestions about what should happen
5 next.

6 MR. WORTMANN: Your Honor, I sent a copy of the
7 premarked set of exhibits. Did you get it?

8 THE COURT: I have all of it.

9 MR. WORTMANN: A three-ring binder.

10 THE COURT: And your lengthy jury instructions as
11 well and equally lengthy voir dire.

12 MR. WORTMANN: I think there was a very good writer
13 who once said it's harder to do something shorter than it is
14 longer. So, I apologize.

15 THE COURT: It's okay.

16 MR. WORTMANN: Incredibly busy.

17 THE COURT: I think this charge is no different from
18 other charges --

19 MR. WORTMANN: No.

20 THE COURT: -- with these accusations.

21 MR. WORTMANN: No. I think that's right, your Honor.

22 THE COURT: Okay. Then I thought that we would
23 impanel 13 just in case. We don't need more than that. 14?

24 MR. WORTMANN: Why take a chance. In case somebody
25 gets caught in traffic, somebody else sets sick, you hate like

1 the dickens to start over again.

2 THE COURT: Okay. And the part of the voir dire
3 questions that deal with CSI and -- television, CSI and
4 Google, I think I will do that in the preliminary charge
5 rather than as part of the voir dire.

6 MR. WORTMANN: Okay.

7 THE COURT: And I guess I need to know before going
8 to the voir dire whether, in fact, Mr. Spencer still adheres
9 to the good judgment of not doing it pro se, because I would
10 need to explain to the jury that he has the right to do that
11 and is there anybody who would have any problems with a
12 criminal defendant representing himself.

13 MR. BUTTERS: As far as I know, I got the nod for
14 today and maybe tomorrow if I do well today. You know, it's a
15 rolling thing.

16 THE COURT: What is the Guideline Range for him, 151
17 to 188?

18 MR. WORTMANN: Yes. It's 262 to 324 after trial.

19 THE COURT: I'm sorry?

20 MR. WORTMANN: 262 to 324 after trial.

21 MR. BUTTERS: He just barely made the Career Offender
22 by like a month because they got a 15-year-old conviction.

23 THE COURT: I forgot, I took off three for acceptance
24 of responsibility.

25 MR. BUTTERS: Yes, it's 151.

1 THE COURT: That would be 151 to 188.

2 MR. BUTTERS: That's the Guideline, of course.

3 THE COURT: That's the Guideline. There's no
4 mandatory minimum?

5 MR. WORTMANN: There is not as far as I know, your
6 Honor, but I actually think he -- I actually think that he
7 qualifies quite easily because a number of the old cases have
8 probation violations later on. Therefore, they get kicked up
9 in terms of the time.

10 MR. BUTTERS: I think we agree that he's a --

11 MR. WORTMANN: He's Career Offender.

12 MR. BUTTERS: He's a Career Offender, even though, of
13 course, Congress had no idea Barry Spencer would be classified
14 that way, since he's such a --

15 THE COURT: 210 to 262 with acceptance of
16 responsibility; is that right?

17 MR. BUTTERS: -- minor person.

18 MR. WORTMANN: That sounds right, Judge, actually.

19 THE COURT: I'm sorry?

20 MR. WORTMANN: Yes, that sounds right. The
21 government did not file an §851.

22 THE COURT: I mean, you can lower it a good deal.

23 MR. BUTTERS: I told him that I thought you would
24 probably give him the street if he pleaded guilty.

25 THE COURT: Is he serving a sentence now? He's not

1 in federal custody at the moment.

2 MR. WORTMANN: Your Honor, he's being held on -- I
3 believe it's two cases. He had a -- he has a drug conviction
4 in 2006 that he got five to five and a day on.

5 THE COURT: But that one got reversed.

6 MR. WORTMANN: That got reversed because of *Melendez-*
7 *Diaz*.

8 THE COURT: Right.

9 MR. WORTMANN: That case is still pending, and he's
10 got another drug case that's pending as well. So, he's being
11 held on those.

12 THE COURT: Would those go away if he were convicted
13 in this case?

14 MR. BUTTERS: Yes.

15 MR. WORTMANN: I think so.

16 MR. BUTTERS: I've talked to his court-appointed
17 counsel, Frank Santisi, and he said that he could plead him
18 tomorrow and he would be released from the state sentences,
19 but he hasn't done anything because he's got this pending
20 case.

21 THE COURT: If he were to plead here and then he
22 would plead there and be sentenced to time served, or what?

23 MR. BUTTERS: Right.

24 MR. WORTMANN: Or a concurrent sentence.

25 MR. BUTTERS: Or probation.

1 MR. WORTMANN: We talked about it and I indicated
2 that I would agree to a concurrent sentence, but, you know...

3 THE COURT: If he were to go to trial here and be
4 convicted, would the option -- would he have the same option
5 in the state court that he has had?

6 MR. BUTTERS: Yes.

7 THE COURT: So that wouldn't change.

8 MR. BUTTERS: Yes.

9 MR. WORTMANN: I think that's right, your Honor.

10 THE COURT: But going to trial has a longer Guideline
11 Range.

12 MR. BUTTERS: Right, but he's unfamiliar with the
13 federal system and -- because he's used to the state system
14 where the Court says, okay, if you plead guilty, this is what
15 you get, which happens most of the time. And so, he's
16 uncomfortable. Even though I've heaped praise on you, he
17 still is just -- he doesn't want to plead guilty. I said,
18 yes, that's your right, and I've done everything I can in that
19 regard.

20 THE COURT: I have no doubt.

21 MR. WORTMANN: Well, your Honor, I have a copy of the
22 filing. I just moved the -- I made the witness list track the
23 order in which we anticipate people are going to come in, and
24 also a copy of the indictment filed with the Court just so you
25 have it.

1 THE COURT: I have it. The second superseding?

2 MR. WORTMANN: Yes, exactly.

3 THE COURT: I think you gave me a revised witness
4 list already -- no. I have an exhibit list. Okay. I have a
5 revised exhibit list, I think. I'll add this to it.

6 MR. WORTMANN: When I did the original exhibit list,
7 I forgot to include the drugs. Yet another indication that
8 I'm getting senile.

9 THE COURT: All right. Well, there's not much we can
10 do now except wait, right?

11 MR. WORTMANN: I think that's right.

12 Your Honor, Mr. Butters and I have talked about a
13 number of things, and he's asked me to ask the police officers
14 not to mention the fact that the officers who did the
15 identification procedure were from the Youth Violence Strike
16 Force and I will ask if I have a minute before we start if I
17 could go out and make that very clear to them. So just say we
18 had other officers, you know, and we've talked with each other
19 about the -- how to handle the fact that Detective Sergeant
20 Keenan who -- knows Mr. Spencer and he will say -- you know,
21 did you recognize him? Who was it? How did you know him? I
22 knew him from prior interactions on the street. And he will
23 not mention the word "drugs," unless, of course, Mr. Butters
24 was to open that up, and I'm fairly confident that he's not
25 going to do that.

1 So, I think we've worked out the, you know -- and
2 I've given the officers very strict instructions on that. And
3 I think there are no exhibits -- there won't be objections to
4 the exhibits?

5 MR. BUTTERS: Well, I don't know yet, but I'll
6 probably object to everything.

7 MR. WORTMANN: I knew it was one way or the other.

8 MR. BUTTERS: No, I don't think I will.

9 THE COURT: Okay.

10 MR. BUTTERS: But, again, I don't have my co-counsel
11 with me for guidance.

12 THE COURT: All right. Well, as soon as he gets
13 here, we'll start in earnest, assuming that the jurors will be
14 available. Thank you.

15 MR. WORTMANN: Thank you, your Honor.

16 (Recess taken.)

17 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY:

18 THE COURT: Good morning again. Please be seated.

19 MR. BUTTERS: Good morning, your Honor.

20 (Pause.)

21 (Defendant enters courtroom.)

22 THE COURT: Good morning.

23 THE DEFENDANT: Good morning, ma'am.

24 THE COURT: Are we ready to proceed?

25 MR. BUTTERS: Yes, your Honor.

1 THE COURT: Would counsel and Mr. Spencer please
2 explain to me how we are going to proceed.

3 MR. BUTTERS: Correct me if I am wrong. Mr. Spencer
4 has authorized me to conduct the trial and we're going to
5 consult, of course, but we've spent quite a bit of time
6 working on this. So, we're ready to go.

7 THE COURT: Okay. In that case -- I think the jurors
8 are ready very soon, right?

9 COURTROOM DEPUTY CLERK URSO: Yes. I just went down
10 to see Jim. I don't know if he's en route up.

11 THE COURT: Well, let me review with you very
12 briefly, since they are en route, what I propose to ask the
13 jurors on voir dire. So, please be seated.

14 VOIR DIRE CONFERENCE:

15 THE COURT: I will introduce Mr. Wortmann and I will
16 then introduce Mr. Spencer and Mr. Butters. And Mr. Spencer
17 is of what town?

18 MR. BUTTERS: Boston.

19 THE DEFENDANT: Yes.

20 THE COURT: And I will ask the jurors whether they
21 know any of the participants in this trial. I will explain to
22 them that Mr. Spencer has been accused in an indictment, which
23 is called the second superseding indictment, although that's
24 irrelevant and I may not even mention it, and that he has been
25 charged in two counts, one with conspiracy to distribute

1 cocaine base on March 20th in 2013 in Boston; and, two, with
2 possessing crack cocaine with the intent to distribute and
3 distributing it on the same day in Boston.

4 MR. WORTMANN: Your Honor, really, I ask that you
5 include the aiding and abetting because that's really the
6 theory under which the case is going to be tried.

7 THE COURT: Aiding and abetting, but, you know, again
8 -- okay, aiding and abetting the distribution.

9 MR. WORTMANN: Correct.

10 THE COURT: I will ask the jurors whether any of them
11 have any knowledge of the events that gave rise to this
12 lawsuit; whether any of them have -- any of them or members of
13 their immediate families, spouses, children, siblings,
14 parents, and that's it, have any relationship to any law
15 enforcement personnel, local, state or federal; whether any of
16 them have had any experience with law enforcement that was
17 either so bad or so good that they cannot be impartial in
18 judging the credibility of a police officer or anybody who
19 works for law enforcement.

20 I'll ask them whether any of them have ever been
21 involved in a lawsuit against the state or Federal Government
22 or been sued by the state or Federal Government, and we'll
23 have to ferret out if anybody says yes what the nature of that
24 was. Anybody who answers yes to any of these questions which
25 are put to the whole panel we will speak with at the sidebar

1 privately.

2 I will ask them whether they or any members of their
3 immediate families have ever been accused in a criminal case,
4 either state or federal; whether any of them have feelings
5 about the laws and enforcement of drug laws that would make it
6 difficult for them to be fair and impartial jurors; whether
7 they have any feelings about drugs in general and the use of
8 drugs, that is illegal drugs, that would make it difficult for
9 them to be fair and impartial jurors.

10 I will tell them that Mr. Spencer is African-American
11 and one or more of the witnesses will be African-American
12 and/or Hispanic. Do any of them have any feelings about
13 African-Americans or Hispanics such that they cannot be fair
14 jurors in this case?

15 I will explain to them that it is the law that the
16 credibility of every witness has to be judged by the juror
17 fairly and impartially and that law enforcement personnel are
18 to be judged in precisely the same way. That is, that their
19 status as a person in law enforcement gives them neither more
20 nor less believability than anybody else. Does anybody have a
21 problem with that?

22 I will explain to them the presumption of innocence.
23 It is called the presumption, but what it really means is that
24 the defendant is innocent until the government proves him
25 guilty beyond a reasonable doubt and because he is innocent,

1 he does not have to prove his innocence. He doesn't have to
2 explain anything he did. He can say to the government, You
3 have accused me. Now you prove it. And does anybody have any
4 problem accepting that principle, very important principle of
5 law?

6 I will read to them the names of the witnesses and
7 ask if they know any of them.

8 The schedule, as I understand it, is that we will
9 finish the case at the latest Wednesday morning and does
10 anybody have a problem with that.

11 And then I will ask them whether there are any
12 reasons that I haven't specifically outlined that cause anyone
13 to believe that they cannot be fair jurors.

14 Any errors or omissions?

15 MR. WORTMANN: Your Honor, I wonder if you might also
16 ask if there's physical disabilities, either hearing or
17 language problems --

18 THE COURT: I include that in the other.

19 MR. WORTMANN: Okay.

20 MR. BUTTERS: We're fine, your Honor.

21 May I ask if -- may Mr. Spencer accompany me to
22 sidebar if we have a sidebar?

23 THE COURT: Yes, since he really is part of this.

24 MARSHAL: Yes, your Honor.

25 THE COURT: Thank you.

1 Now, the jurors are en route and...

2 (Discussion off the record.)

3 THE COURT: Mr. Spencer and Mr. Butters, can I have
4 one --

5 MR. BUTTERS: I'm sorry.

6 THE COURT: I want to -- Mr. Butters, I don't know
7 that you have been in this courtroom recently. Since we get
8 the jurors all mixed up already -- that is, the jurors -- a
9 large number of jurors come to the court to be impaneled by
10 all the judges who are impaneling and the computer picks out
11 those who come to this courtroom. So, they're already mixed up.

12 You will have a list that shows them in the order in
13 which the computer picked them. There is no other order. And
14 we will seat them first in the jury box. The first one on the
15 list will be in Seat No. 1, which is the first row over here,
16 and -- until the jury box is filled and then we'll go to the
17 back of the room.

18 When they -- initially I address them all, as I said.
19 Anyone who answered yes we will, in the order in which they're
20 seated, bring them to the sidebar and I'll ask further
21 questions of them, and anybody who should be excused for cause
22 and it's clear should be excused for cause we will excuse
23 immediately and leave the seat blank so you will be able to
24 identify the persons remaining with the list. Are you with me?

25 MR. BUTTERS: Yes, I'm with you.

1 THE COURT: And then the peremptory challenges we
2 will do starting with the government one, defendant two,
3 government one, defendant two, until you have an even number,
4 because, I'm sure you know, Mr. Spencer, you get ten
5 challenges. The government only gets six. So, once we get
6 even, then we go to one one and, hopefully, we'll get it done
7 with dispatch. And the jurors are en route. So we should
8 have them very quickly.

9 (Pause.)

10 THE COURT: Mr. Marshal, what are the chances of the
11 Suffolk people bringing Mr. Spencer on time tomorrow?

12 MARSHALL: I can check with the supervisor and make a
13 call over to Suffolk County to make sure that he's here by 7
14 o'clock.

15 THE COURT: I mean, we are actually adding one trial
16 day because of their lateness.

17 MARSHAL: Right.

18 (Jury panel enters courtroom.)

19 JURY IMPANELMENT:

20 THE COURT: Thank you very much.

21 MR. MCLEAR: Thank you, your Honor.

22 THE COURT: Now, those of you sitting in the middle,
23 have you figured out why you had to go from one end of this
24 bench to the other? You haven't?

25 The reason is that we have a list and we wanted to

1 seat you in the order in which you appear on the list and for
2 those of you on the long bench, the only way to do that is to
3 have you start at one end, because if you started at this end,
4 our list would be meaningless and we don't like meaningless
5 lists.

6 In any event, I am Judge Zobel and we are about to
7 impanel a jury in a very short criminal case. We anticipate
8 to be done by Wednesday of this week.

9 The impanelment process, that is the choosing of
10 those of you who will be the jurors who will try this case,
11 involves, first of all, my asking you a series of questions,
12 the sole object of which is to make sure that you do not come
13 to this task with any preconceptions, with any biases or
14 prejudices that would affect your ability to try this case
15 fairly and impartially and consider the evidence that will be
16 presented in the case fairly and impartially and reach a fair
17 verdict in the case.

18 So, let me begin by introducing you to the
19 participants in this trial. In a criminal case, the
20 government is represented by -- it is the government that
21 accuses someone and it is represented by an Assistant United
22 States Attorney, Mr. John A. Wortmann, Jr. Do any of you know
23 Mr. Wortmann?

24 MR. WORTMANN: Good morning.

25 (No response.)

1 THE COURT: The defendant in this case is Mr. Barry
2 Spencer of Boston, and he is represented by Mr. Thomas J.
3 Butters, who practices law in Boston. Would you please rise?
4 Do any of you know either Mr. Spencer or Mr. Butters?

5 (No response.)

6 THE COURT: Thank you.

7 Now, the document in which the accusation is
8 contained is called an indictment, and the indictment in this
9 case accuses Mr. Spencer in two counts:

10 One, it says that he conspired with others to
11 distribute crack cocaine in Boston in March of 2013, March
12 20th; and the second count is what is called the substantive
13 count. It says not that he conspired, but that he aided and
14 abetted the distribution of crack cocaine on that same day in
15 Boston. They are two different offenses and the elements of
16 these offenses are different and I will explain them to those
17 of you who will serve as the jurors in this case, but those
18 are the accusations in the case. And the question to you is,
19 do any of you know anything at all about the events that gave
20 rise to this accusation?

21 Now, do any of you or any members of your immediate
22 families -- which means any spouses, siblings, children or
23 parents, but not the cousins and the aunts and the uncles. Do
24 any of you or your immediate families have any relationship
25 with anyone who works in law enforcement, local, state or

1 federal?

2 Okay. Let me do it in the order in which my list
3 goes, so I start over here in the jury box.

4 Mr. Hirschfeld, you did not raise your hand?

5 MR. HIRSCHFELD: Could you repeat the question?

6 THE COURT: The question is whether you or any member
7 of your immediate family as I defined it has a relationship
8 with law enforcement, family involved in law enforcement.

9 MR. HIRSCHFELD: Yes. My brother-in-law is a state
10 police.

11 THE COURT: Okay. So, the answer is yes.

12 Anybody else in the first row?

13 (No response.)

14 THE COURT: Okay. The second row.

15 COURTROOM DEPUTY CLERK URSO: Juror No. 8 also, Judge.

16 THE COURT: Ms. Gath.

17 MS. GATH: My --

18 THE COURT: No, don't tell me now. At the moment --
19 I'm sorry, I wasn't clear. I just wanted to know for whom the
20 answer is yes and then I'll speak with you further over here.

21 So, Ms. Gath, the answer is yes, right? And then Mr.
22 McGaffigan.

23 COURTROOM DEPUTY CLERK URSO: And Juror No. 12 also.

24 THE COURT: Mr. Goncalves. Anybody else in the jury
25 box?

1 (No response.)

2 THE COURT: Okay. First row on my left over here,
3 your right? Nobody. And in the middle? Mr. Chouinard.

4 MR. CHOUINARD: Yes.

5 COURTROOM DEPUTY CLERK URSO: Juror No. 26.

6 THE COURT: Anybody else in the first row? Anybody
7 over here on my right? Anybody in the second row? Mr.
8 Strauss.

9 COURTROOM DEPUTY CLERK URSO: Juror No. 37.

10 THE COURT: See, the system works.

11 Anybody else?

12 (No response.)

13 THE COURT: Okay. Have any of you ever had an
14 experience with anybody in law enforcement, police officer or
15 federal or local agent, that was either so bad or so terrific
16 that you cannot be a fair juror in judging police officers or
17 agents in general?

18 COURTROOM DEPUTY CLERK URSO: Juror No. 2.

19 THE COURT: Mr. Holland.

20 COURTROOM DEPUTY CLERK URSO: And Juror No. 8, Judge.

21 THE COURT: And Ms. Gath.

22 COURTROOM DEPUTY CLERK URSO: Yes.

23 THE COURT: Anybody else in the jury box? Anybody in
24 the back?

25 (No response.)

1 THE COURT: Have any of you or members of your
2 immediate families ever been accused of a crime and convicted
3 of a crime?

4 COURTROOM DEPUTY CLERK URSO: Juror No. 5.

5 THE COURT: Mr. Bouchie.

6 COURTROOM DEPUTY CLERK URSO: Yes. Juror No. 11.

7 THE COURT: Anybody else in the jury box? Mr.
8 McGaffigan.

9 COURTROOM DEPUTY CLERK URSO: Yes. And Juror No. 14,
10 Judge, also, Ms. Kirk.

11 THE COURT: Ms. Kirk.

12 COURTROOM DEPUTY CLERK URSO: Yes.

13 THE COURT: That's it in the jury box?

14 In the first row? Mr. Chouinard -- no. Mr. Geary
15 and Mr. Maldonado.

16 MR. BUTTERS: I'm sorry, what number was that, Lisa?

17 COURTROOM DEPUTY CLERK URSO: I'm sorry?

18 THE COURT: I missed you? I'll come back to you in a
19 moment. Mr. Maldonado, No. 28.

20 MR. WORTMANN: Is that the only one, your Honor? I'm
21 sorry.

22 THE COURT: I'm sorry?

23 MR. WORTMANN: Was that the only one in the middle?

24 THE COURT: No. Mr. Maldonado, No. 28, also. And
25 now I come back to Ms. Bagley.

1 COURTROOM DEPUTY CLERK URSO: Yes, Juror No. 20.

2 THE COURT: Anybody else in the first row on the
3 right? Mr. Harrington.

4 COURTROOM DEPUTY CLERK URSO: Yes, 31.

5 THE COURT: And anybody in the second row? Ms.
6 Orben.

7 COURTROOM DEPUTY CLERK URSO: Yes, 35.

8 THE COURT: And Mr. Strauss.

9 COURTROOM DEPUTY CLERK URSO: Yes, 37.

10 THE COURT: Anybody else? And Mr. Bachand.

11 COURTROOM DEPUTY CLERK URSO: Yes, 38.

12 THE COURT: That's it, right?

13 (No response.)

14 THE COURT: Okay. Now, this is a case in which the
15 defendant has been accused of illegal drug transactions. So,
16 the question is, do any of you have any feelings about our
17 drug laws and the enforcement of the drug laws that are such
18 that you cannot fairly and impartially try this case?

19 Mr. Dufresne.

20 COURTROOM DEPUTY CLERK URSO: No. 6.

21 THE COURT: Anybody else? Anybody in the jury box?
22 Anybody in the back?

23 (No response.)

24 THE COURT: Do any of you have feelings about illegal
25 drugs in general and the use of illegal drugs that would

1 interfere with your being fair jurors?

2 Mr. Harrington.

3 COURTROOM DEPUTY CLERK URSO: Yes, 31.

4 THE COURT: We're making progress.

5 Now, the defendant, as you know, is African-American
6 and one or more of the witnesses will be either African-
7 American or Hispanic. And the question is whether any of you
8 have feelings about that fact that would make it difficult for
9 you to be fair and impartial. Please be honest.

10 Mr. Dube.

11 COURTROOM DEPUTY CLERK URSO: Juror No. --

12 THE COURT: Anybody else?

13 MR. WORTMANN: I'm sorry. What number?

14 COURTROOM DEPUTY CLERK URSO: 36.

15 MR. WORTMANN: Thank you.

16 THE COURT: Now, let me explain to you a couple of
17 principles of law under which we operate. One of those is
18 that you must judge -- one of the things that a jury
19 necessarily does in order to reach a verdict is after hearing
20 the witnesses give their testimony, you make a judgment as to
21 whether you believe that testimony in whole or in part or
22 whether you disbelieve it.

23 Now, it is also a rule of law that says that the
24 status of a person or the job that a person has should not in
25 any way decide whether you believe that person or not. So, a

1 police officer, for example, is no more credible or less
2 credible than an ordinary mortal.

3 Is there anybody who has any difficulty not only
4 believing that, but living with it in the context of being a
5 juror? That is, you must judge police officers in exactly the
6 same way that you would anybody else.

7 Now, another principle is that a defendant is
8 presumed to be innocent. That is actually not entirely
9 correct, because what it really means is that a defendant who
10 has been accused of a crime is innocent. He absolutely is
11 innocent until the government proves him guilty beyond a
12 reasonable doubt, and what that means as a corollary is that
13 because he is innocent, he does not have to prove his
14 innocence. He does not have to take the stand and explain
15 anything. He does not have to bring any witnesses to tell his
16 side of the story. He can say to the government, You have
17 accused me. Now you prove it.

18 Is there anybody who does not believe that you can
19 decide this case in accordance with this principle?

20 (No response.)

21 THE COURT: Now, let me read you the names of the
22 witnesses who will appear in this case and ask you whether you
23 know any of them. These are four police officers for the City
24 of Boston:

25 Sergeant Donald Keenan, Officer Richard Casallas,

1 Detective Greg Walsh and Officer Sean Flaherty. Do any of you
2 know any of these people?

3 (No response.)

4 THE COURT: And Claire Rimkus, who works at the
5 Massachusetts State Police Crime Lab in Sudbury,
6 Massachusetts. This is a different outfit from what was in
7 the news for a while earlier. Do any of you know Ms. Rimkus?

8 (No response.)

9 THE COURT: Now, the schedule on which we will
10 operate is we will be here today until 1 o'clock. We will
11 hopefully start promptly at 9:00 tomorrow and suspend at 1:00,
12 unless we finish before that. And, again, on Wednesday we
13 will start at 9:00 and certainly finish by 1:00. That,
14 hopefully, is the end of this trial. That is, we will hear
15 evidence today, tomorrow and then probably the lawyers will
16 argue to you. Maybe they will sum up the testimony on
17 Wednesday and then I will instruct you on the law and then on
18 Wednesday you will be deciding the case.

19 Does that schedule cause anyone serious
20 inconvenience? Understanding that you're not likely to find a
21 case shorter than this and less inconvenient and more
22 convenient than this one.

23 (No response.)

24 THE COURT: I think that's the first.

25 Finally, last question, is there any reason that I

1 have not specifically asked you about why any of you might
2 feel that you are not -- that you should not serve as jurors,
3 cannot serve as jurors? I mean by that, for example, some
4 physical disability or language disability or something like
5 that.

6 (No response.)

7 THE COURT: Okay. Relax while I talk to those of you
8 who answered yes to any questions and then we will finish soon
9 thereafter the seating of the jury and we will proceed and
10 those of you who are not seated will go back to the jury
11 lounge.

12 So, may I see counsel and Mr. Spencer, please.

13 **SIDE BAR CONFERENCE:**

14 THE COURT: Okay. Mr. Holland, can we start with
15 you, please.

16 COURTRoom DEPUTY CLERK URSo: What about juror --
17 excuse me.

18 THE COURT: I'm sorry, we'll come to you next, Mr.
19 Hirschfeld.

20 COURTRoom DEPUTY CLERK URSo: Juror No. 1.

21 (Juror approaches sidebar.)

22 THE COURT: Good morning.

23 JUROR: Good morning.

24 THE COURT: You indicated that some member of your
25 family worked for law enforcement?

1 JUROR: Yes.

2 THE COURT: Who?

3 JUROR: Brother-in-law is a state trooper.

4 THE COURT: He is a state police officer now?

5 JUROR: (Nods) .

6 THE COURT: Where is he located?

7 JUROR: I think he's in Revere.

8 THE COURT: That is, he works out of Revere?

9 JUROR: Yes.

10 THE COURT: Do you discuss with him what he does as a
11 police officer?

12 JUROR: Yeah. Sure.

13 THE COURT: Has he dealt in drug cases?

14 JUROR: Yeah, everything.

15 THE COURT: So, you've talked to him about drug
16 cases?

17 JUROR: Yes.

18 THE COURT: Have you as a result of that gained any
19 kind of knowledge about how drug cases are prosecuted?

20 JUROR: Well, I can see his point of view, yes.

21 THE COURT: Does that mean -- can you be fair in this
22 case despite what you've learned from him?

23 JUROR: I think so.

24 THE COURT: Any questions, Mr. Butters?

25 MR. BUTTERS: Could I ask his name?

1 JUROR: You know, I -- this is many years ago, but I
2 was arrested once in the presence of a controlled substance
3 and it was continued without a finding. So --

4 THE COURT: How long ago was that?

5 JUROR: It was, you know, 30 years ago, probably.

6 THE COURT: Would that experience in any way affect
7 your ability to try this case fairly?

8 JUROR: I don't think so.

9 THE COURT: Mr. Butters?

10 MR. BUTTERS: I just wanted to know if he could share
11 the name of his brother-in-law, if that's okay.

12 JUROR: Richard -- is that okay?

13 THE COURT: Richard?

14 JUROR: Richard Donovan.

15 THE COURT: Okay.

16 MR. BUTTERS: I don't know him.

17 THE COURT: Any other questions?

18 MR. BUTTERS: No, your Honor.

19 THE COURT: Mr. Wortmann?

20 MR. WORTMANN: None. Thank you.

21 THE COURT: Thank you very much. You can go back to
22 your seat, please.

23 (Juror steps away from sidebar.)

24 THE COURT: Now Mr. Holland, please.

25 COURTROOM DEPUTY CLERK URSO: Juror No. 2.

1 (Juror approaches sidebar.)

2 THE COURT: Good morning.

3 JUROR: Good morning.

4 THE COURT: You indicated that you had a terrible
5 experience with a police officer?

6 JUROR: Senior in high school I was involved in an
7 incident.

8 THE COURT: How long ago was that?

9 JUROR: Four years ago. Involved in an incident that
10 resulted in me being charged with assault --

11 THE COURT: You were charged with --

12 JUROR: Assault on a police officer. It was complete
13 exaggeration, what happened, and as a result, the charges were
14 dropped, but I feel like that experience really caused a
15 significant amount of prejudice on my part.

16 THE COURT: Does that mean that you could not fairly
17 judge the believability of another officer?

18 JUROR: Of the charges that were brought against
19 somebody, perhaps.

20 THE COURT: But you're not sure?

21 JUROR: I think that it's always in the back of my
22 mind when it comes to believing the police report or what --
23 the charges brought against somebody just because of my
24 experience.

25 THE COURT: Mr. Wortmann?

1 MR. WORTMANN: I have no questions, your Honor.

2 THE COURT: Any questions?

3 MR. BUTTERS: No questions, your Honor.

4 THE COURT: If you think that you cannot be fair in
5 this case, then I will excuse you.

6 JUROR: I don't think I can be 100 percent fair.

7 THE COURT: Okay. I assume there's no objection to
8 accusing for cause. Thank you.

9 (Juror steps away from sidebar.)

10 THE COURT: Mr. Bouchie.

11 COURTROOM DEPUTY CLERK URSO: Juror No. 5.

12 (Juror approaches sidebar.)

13 THE COURT: Good morning.

14 JUROR: Good morning.

15 THE COURT: You indicated that someone in your family
16 had been convicted of a crime?

17 JUROR: Yes. Myself.

18 THE COURT: I'm sorry?

19 JUROR: Myself. My brother also.

20 THE COURT: Of what?

21 JUROR: All misdemeanors.

22 THE COURT: I'm sorry?

23 JUROR: They're all misdemeanors. 15 years ago I was
24 charged with assault on a police officer.

25 THE COURT: And nothing since then?

1 JUROR: No.

2 THE COURT: Would that experience make it in any way
3 difficult for you to be a fair juror in this case?

4 JUROR: I don't think so.

5 THE COURT: Are you sure?

6 JUROR: Mm-hmm.

7 THE COURT: Any questions, Mr. Butters?

8 MR. BUTTERS: No, your Honor.

9 THE COURT: Mr. Wortmann?

10 MR. WORTMANN: Sir, I wonder, were you convicted of
11 assault?

12 JUROR: I pleaded, but it's a conviction, yes.

13 MR. WORTMANN: Let me ask you whether you think you
14 were treated fairly by the police.

15 JUROR: No, I don't think I was.

16 MR. WORTMANN: Have you had to list that over the
17 years on employment applications, things like that?

18 JUROR: No.

19 MR. WORTMANN: You don't think it would have any
20 impact on you?

21 JUROR: On my life?

22 MR. WORTMANN: On your service here.

23 JUROR: No, I don't think so.

24 THE COURT: Thank you.

25 (Juror steps away from sidebar.)

1 MR. WORTMANN: Your Honor, I think assault on a
2 police officer is a felony. I'm not -- I think he may --

3 MR. BUTTERS: What I was going to say, it was
4 continued without a finding.

5 MR. WORTMANN: That's why I asked him.

6 MR. BUTTERS: He probably doesn't even know. I mean,
7 lots of times it's broken down to simple assault and battery.

8 MR. WORTMANN: But that's two-and-a-half-year, which
9 is a felony for purposes of the statute.

10 THE COURT: I will not excuse him for cause.

11 MR. WORTMANN: Your Honor, I'm suggesting he may not
12 be eligible to sit because of a conviction.

13 THE COURT: But dismissed without a finding, whatever
14 it is, is not a conviction.

15 MR. WORTMANN: I thought I heard him say -- did he
16 say it was dismissed without conviction?

17 THE COURT: Yes. I thought he said not guilty.

18 MR. WORTMANN: Your Honor, misdemeanor in the state
19 court can still be punished by more than a year and,
20 therefore, qualifying as a felony.

21 THE COURT: Really?

22 MR. WORTMANN: I believe it is.

23 MR. BUTTERS: I think we should -- maybe we should
24 ask him if it was continued without a finding.

25 MR. WORTMANN: Yes, I think that's fine. That makes

1 sense.

2 MR. BUTTERS: Then there's no conviction.

3 MR. WORTMANN: I think you should make clear to him
4 when he comes back there's a question of eligibility.

5 THE COURT: Mr. Bouchie, can I talk to you again,
6 please? I'm sorry.

7 (Juror approaches sidebar.)

8 THE COURT: What was the outcome of your experience?

9 JUROR: Penalty, you mean?

10 THE COURT: I'm sorry?

11 JUROR: What was the outcome?

12 THE COURT: Yes.

13 JUROR: It was pleaded out and I got probation.

14 MR. BUTTERS: But that means it was continued without
15 a finding, right?

16 JUROR: I'm not sure exactly, but I was told
17 basically the same thing, continued without a finding.

18 MR. WORTMANN: They're only trying to figure out
19 whether you're eligible or not, whether you will be fair or
20 not.

21 Do you recall -- do you know whether or not there was
22 a conviction entered on your record?

23 JUROR: I'm not sure. I was under the understanding
24 it's automatically a conviction because I pled guilty to
25 sufficient facts.

1 MR. BUTTERS: But, see, that's not a guilty plea in
2 the state.

3 JUROR: Okay.

4 MR. BUTTERS: That's a continued without a finding --

5 MR. WORTMANN: No.

6 MR. BUTTERS: -- or probation without a finding might
7 be --

8 MR. WORTMANN: Probation --

9 MR. BUTTERS: 276 Section 78, or something. I doubt
10 that -- well --

11 JUROR: I'm not sure if it's considered a conviction.

12 MR. BUTTERS: I don't think you do based on what
13 you're saying.

14 JUROR: But I thought that's what it meant.

15 MR. WORTMANN: Conviction, but you're not sure?

16 JUROR: Not sure.

17 MR. WORTMANN: Okay. Thanks.

18 THE COURT: Thank you.

19 (Juror steps away from sidebar.)

20 MR. WORTMANN: I don't know what to do.

21 THE COURT: I honestly don't know the answer.

22 MR. WORTMANN: The only way we could find out, you
23 could run his BOP.

24 THE COURT: What do you want me to do?

25 MR. WORTMANN: I think we should probably get a date

1 of birth and run his BOP. It will take five minutes.

2 THE COURT: I'll write a question mark at the moment
3 and go on. Mr. Dufresne.

4 COURTROOM DEPUTY CLERK URSO: Juror No. 6.

5 (Juror approaches sidebar.)

6 THE COURT: Good morning.

7 JUROR: Good morning.

8 THE COURT: You indicated that you had some feelings
9 about drug laws?

10 JUROR: Yeah. Just basically the crime doesn't
11 really fit the bill sometimes. That is, drug offenders --
12 non-violent drug offenders can get up to ten years or more and
13 rapists and child molesters can get out in two and a half
14 years. Makes no sense to me whatsoever. People's lives are
15 ruined, but someone trying to, you know, protect their family,
16 make some money for their family, gets 15 years and their
17 whole life is gone and non-violent drug offenders fill up our
18 jails.

19 THE COURT: I'm sorry?

20 MR. WORTMANN: I thought the whole court can hear.

21 THE COURT: Does anybody have any questions?

22 MR. BUTTERS: No.

23 THE COURT: I assume that means that you don't think
24 that you could fairly judge this case?

25 JUROR: Not at all.

1 THE COURT: I will excuse you and please go back to
2 the jury lounge.

3 (Juror steps away from sidebar.)

4 THE COURT: Lisa points out the question on the jury
5 questionnaire asks them to --

6 MR. WORTMANN: Your Honor, as long as Mr. Butters is
7 okay with holding him --

8 MR. BUTTERS: Yes, I think Mr. Spencer and I agree
9 that he can remain on and not -- we don't object if he's --

10 MR. WORTMANN: I think we'll all make the assumption
11 that had there been a conviction on his record, he would have
12 been screened out.

13 MR. BUTTERS: Right.

14 THE COURT: Ms. Gath.

15 COURTROOM DEPUTY CLERK URSO: Juror No. 8.

16 (Juror approaches sidebar.)

17 THE COURT: Good morning.

18 JUROR: Good morning.

19 THE COURT: You said that both -- you had some law
20 enforcement relationship and also --

21 JUROR: My nephew, who is a state trooper.

22 THE COURT: You have --

23 JUROR: A nephew.

24 THE COURT: But you also indicated some bad
25 experience with --

1 JUROR: There were a couple of incidents involving my
2 kids that the police officers involved I believe lied on the
3 police report, and there was another incident where my son was
4 with a friend on four wheelers where they were chased down and
5 one of the cops pulled a gun on his friend.

6 THE COURT: With respect to the first incident, what
7 was the end result?

8 JUROR: The end result as far as?

9 THE COURT: Your kids were concerned.

10 JUROR: Yeah. Nothing happened. They weren't
11 convicted of anything and neither was the cop involved.

12 THE COURT: And what town did this occur?

13 JUROR: Tewksbury, where I live.

14 THE COURT: Would that make it in any way difficult
15 for you to decide fairly and impartially the testimony of --

16 JUROR: No, it would not.

17 THE COURT: Mr. Butters, any questions?

18 MR. BUTTERS: No, your Honor.

19 THE COURT: Mr. Wortmann?

20 MR. WORTMANN: How long ago was this, ma'am?

21 JUROR: Let's see. My son is 34 now. So, he was 16.

22 MR. WORTMANN: Okay.

23 JUROR: Long time ago. I was just answering
24 honestly.

25 MR. WORTMANN: We appreciate it.

1 You think that's just in the past and it's not going
2 to affect you?

3 JUROR: Mm-hmm.

4 MR. WORTMANN: Thanks.

5 THE COURT: Thank you.

6 (Juror steps away from sidebar.)

7 THE COURT: Mr. McGaffigan.

8 COURTROOM DEPUTY CLERK URSO: Juror No. 11.

9 (Juror approaches sidebar.)

10 THE COURT: Good morning.

11 JUROR: Good morning, your Honor.

12 THE COURT: Now, you indicated both that you had some
13 law enforcement relatives --

14 JUROR: Yes, I have.

15 THE COURT: -- and also --

16 JUROR: My father for 37 years was a police officer
17 in the City of Medford and I've got a brother that's at
18 Harvard University.

19 THE COURT: He's a Harvard police officer?

20 JUROR: Yeah, for the University of Harvard.

21 THE COURT: Is your father still alive?

22 JUROR: Thankfully, yes.

23 THE COURT: Do you talk to him about his experience
24 as a police officer?

25 JUROR: He told me the stories growing up, one of

1 seven kids. We heard him, good and bad.

2 THE COURT: Would that relationship and what you have
3 learned from your father and your brother make it in any way
4 difficult for you to be a fair juror?

5 JUROR: I believed the police officers growing up.
6 So, I do have a little higher standard on that end just
7 because he's my father, on that end.

8 THE COURT: Could you disbelieve a police officer?

9 JUROR: Oh, yeah. There's a few bad ones out there.
10 There's a few crooked ones out there. I've seen that over the
11 years.

12 THE COURT: Now, you also indicated that someone in
13 your family had been convicted of a crime?

14 JUROR: Yes, my brother-in-law. He was -- I think it
15 was last -- it was due to drugs being involved in it.
16 Larceny. I don't know if he served time.

17 THE COURT: How long ago was that?

18 JUROR: Probably three to five years. He served up
19 in New Hampshire. I don't think he served any time in
20 Massachusetts, but was on probation because Mass didn't want
21 to deal with him. They made New Hampshire.

22 THE COURT: Is he still in trouble?

23 JUROR: No. He's on probation.

24 THE COURT: Is he still part of the family?

25 JUROR: It wasn't easy. Those dinners are tough,

1 but --

2 THE COURT: Would that -- your knowledge of that and
3 the relationship to the defendant in that case make it
4 difficult for you to be a fair juror?

5 JUROR: No, I don't think so. The facts are the
6 facts.

7 THE COURT: Did he plead or did he go to trial?

8 JUROR: He went to trial.

9 THE COURT: Any questions, Mr. Wortmann?

10 MR. WORTMANN: Do you think he was treated fairly by
11 the system?

12 JUROR: Oh, yes, I do. He was guilty, plain and
13 simple.

14 THE COURT: Mr. Butters?

15 MR. BUTTERS: You said that there was a -- it was
16 because he had a drug problem?

17 JUROR: Yeah. He was going to Home Depot, stealing
18 the cooper wire and selling it for money to feed his
19 addiction.

20 MR. BUTTERS: So, does that -- would that bother you
21 in this case, the fact that we're talking about crack cocaine
22 and street dealing?

23 JUROR: Depending. I have to see what the
24 evidence -- I mean, like I said, he rightfully went and did
25 it. I mean, everything - the evidence -- they presented the

1 case. I mean, I'm sure he did it. You could deny what you
2 want, but evidence that the attorney pulled out showed that he
3 did it. So, I mean -- do I think he --

4 MR. BUTTERS: They had a film?

5 JUROR: Well, it was closed circuit TV showing him
6 going in and taking out the cooper, and he alleged that that's
7 why he was doing it, and I was living around and I saw what
8 happened. So...

9 THE COURT: Do you feel secure that you can be a fair
10 juror in this case?

11 JUROR: Yeah, I believe I can.

12 THE COURT: Thank you.

13 (Juror steps away from sidebar.)

14 THE COURT: Mr. Goncalves.

15 COURTROOM DEPUTY CLERK URSO: 12, Juror No. 12.

16 (Juror approaches sidebar.)

17 THE COURT: Good morning.

18 JUROR: Good morning.

19 THE COURT: You have some law enforcement?

20 JUROR: I'm a correctional officer.

21 THE COURT: I'm sorry?

22 JUROR: I'm a correctional officer.

23 THE COURT: Where?

24 JUROR: Bristol County Sheriff's Department.

25 THE COURT: That's not in jail or is it jail?

1 JUROR: It's in a jail and booking area. We take in
2 prisoners off the street from police departments.

3 THE COURT: Do you think you could be a fair juror in
4 a criminal case?

5 JUROR: It's a revolving door, same guys coming in
6 and out.

7 THE COURT: What does that mean about fairness?

8 JUROR: It's tough. It's tough to judge.

9 THE COURT: I mean, can you hear the evidence and not
10 think of Mr. Spencer as coming in and out?

11 JUROR: I hear them talk all day and how everybody is
12 innocent. In doing my rounds, they're all talking about how
13 when they go back on the street, they're going to do it again.
14 It's the same stuff over and over again. Like I said, it's a
15 revolving door. Frequent flier miles when they come in.

16 THE COURT: What I'm trying to find out is how that
17 will relate to your perception of what the evidence is in this
18 case and whether Mr. Spencer has been proven guilty.

19 JUROR: I know I'm not there to judge. I'm there for
20 care, custody and control, but it's stuff -- I don't know.

21 THE COURT: Well, you are here to judge in a sense.
22 You're here to judge the evidence. And the question is
23 whether you can do that fairly, leaving behind the revolving
24 door, just hearing what's here.

25 JUROR: I think I would have a tough time.

1 THE COURT: Okay. Counsel agree that we should
2 excuse you from this case, but we'll find another one for you.
3 So, please go down to the jury lounge.

4 (Juror steps away from sidebar.)

5 THE COURT: Ms. Kirk.

6 COURTROOM DEPUTY CLERK URSO: 14.

7 (Juror approaches sidebar.)

8 THE COURT: Good morning.

9 JUROR: Good morning.

10 THE COURT: How are you?

11 JUROR: I'm fine. Thank you.

12 THE COURT: You indicated that you had somebody in
13 your family who had been convicted of a crime?

14 JUROR: My son, about 20 years ago in Maine.

15 THE COURT: What did he do?

16 JUROR: Marijuana.

17 THE COURT: Did he have to go to jail?

18 JUROR: Nine months.

19 THE COURT: How has he been since then?

20 JUROR: He's been fine.

21 THE COURT: Would that experience make it in any way
22 difficult for you to decide whether to convict Mr. Spencer or
23 not?

24 JUROR: No.

25 THE COURT: No problem?

1 JUROR: No problem.

2 THE COURT: Any questions, Mr. Butters?

3 MR. BUTTERS: Do you think he was treated fairly?

4 JUROR: Yes. He was in minimum security.

5 MR. BUTTERS: You think the police were on the up and
6 up with him?

7 JUROR: Yes.

8 MR. BUTTERS: Do you think the police are usually on
9 the up and up?

10 JUROR: Yes, because he knows a lot of the policemen
11 up there, but he's been really good. He doesn't -- he used to
12 drink, too, but he doesn't do anything like that anymore.

13 MR. BUTTERS: So, you think you probably believe most
14 police officers?

15 JUROR: Yes, I do.

16 MR. WORTMANN: Would you be able to consider a police
17 officer's testimony the same as anybody else's?

18 JUROR: Yes.

19 MR. WORTMANN: Take it for whatever it's worth. If
20 it's believable, if it's not believable, however it comes out?

21 JUROR: Yes.

22 THE COURT: Thank you very much. Please return to
23 your seat.

24 (Juror steps away from sidebar.)

25 THE COURT: Ms. Bagley.

1 COURTROOM DEPUTY CLERK URSO: Juror No. 20.

2 (Juror approaches sidebar.)

3 THE COURT: Good morning.

4 JUROR: Hi.

5 THE COURT: I think you raised your hand in response
6 to a question.

7 JUROR: I did. My stepson was arrested and convicted
8 of drug use or breaking and entering. I'm not really sure of
9 the details. It was after my husband and I were separated and
10 divorced shortly after. So -- and I have custody of my kids.
11 So, it was -- I found out about it when five detectives came
12 to my door looking for him and he's in -- I think he's staying
13 at the Salvation Army in Cambridge. So, he's been in and out
14 a couple of times.

15 THE COURT: Would that experience make it in any way
16 difficult for you to be fair in this case?

17 JUROR: I don't believe so, no.

18 THE COURT: Mr. Wortmann, any questions?

19 MR. WORTMANN: Do you think he was treated fairly?

20 JUROR: I don't really know. I wasn't there during
21 any of it. I only know what happened. My ex-husband knows
22 when he came out of jail, but I think -- I believe that he was.

23 MR. WORTMANN: And do you think the drug laws make
24 sense?

25 JUROR: I think they try the best they can to help

1 people.

2 MR. WORTMANN: Okay. Thank you.

3 THE COURT: Mr. Butters, any questions?

4 MR. BUTTERS: I just wondered, do you think -- this
5 is a crack cocaine case. A small amount of crack cocaine was
6 sold. Do you think you would have a problem judging --

7 JUROR: No, I don't have any experience with any of
8 that. So, no.

9 MR. BUTTERS: Me neither.

10 THE COURT: Thank you.

11 (Juror steps away from sidebar.)

12 THE COURT: Mr. Geary.

13 (Juror approaches sidebar.)

14 COURTROOM DEPUTY CLERK URSO: 24, I didn't have him.

15 THE COURT: Good morning. You did raise your hand?

16 JUROR: Yes. That was the question on if I have ever
17 been arrested. I've been arrested.

18 THE COURT: You or a member of your family, arrested
19 and convicted?

20 JUROR: Yes, I have been 40 years ago.

21 THE COURT: What was the charge?

22 JUROR: Just disturbance, and stuff. My son has been
23 in jail for -- he's been arrested several times for fighting,
24 fighting with policemen, things of that nature.

25 THE COURT: Has he ended up in jail?

1 JUROR: He's out now living with me.

2 THE COURT: Do you think that you will be able to
3 fairly judge the evidence in this case given your experience
4 with yourself and your son?

5 JUROR: Mm-hmm.

6 THE COURT: Yes?

7 JUROR: Yeah.

8 THE COURT: The evidence, as you know from the list
9 of witnesses, will be presented largely by police officers.
10 And do you think you can judge that fairly?

11 JUROR: Yeah, I guess. I have friends that are
12 police officers now. I don't know.

13 MR. BUTTERS: You don't have to be ashamed.

14 JUROR: I'm not, not at all.

15 THE COURT: Any questions, Mr. Butters?

16 MR. BUTTERS: No, your Honor.

17 THE COURT: Mr. Wortmann?

18 MR. WORTMANN: Do you think because of your work at
19 the post office, you'll be able to fairly judge? Because the
20 Federal Government is involved. Would that affect you in any
21 way?

22 JUROR: I mean, no. Because I hate the post office?

23 MR. WORTMANN: Because you hate the post office,
24 because you love your job, whatever it is.

25 JUROR: No. No.

1 THE COURT: Thank you very much.

2 (Juror steps away from sidebar.)

3 THE COURT: Mr. Chouinard.

4 COURTROOM DEPUTY CLERK URSO: Juror No. 26.

5 (Juror approaches sidebar.)

6 THE COURT: How do you pronounce your name?

7 JUROR: *Chouinard.*

8 THE COURT: Okay.

9 JUROR: Good morning, your Honor.

10 THE COURT: You had indicated some relationship with
11 law enforcement types?

12 JUROR: My wife works for the Essex County DA's
13 office.

14 THE COURT: In what capacity?

15 JUROR: Receptionist in the court system.

16 THE COURT: Would that relationship make it difficult
17 for you to be fair?

18 JUROR: No, it wouldn't.

19 THE COURT: No problem?

20 JUROR: No problem.

21 THE COURT: Any questions, Mr. Wortmann?

22 MR. WORTMANN: No, thank you.

23 THE COURT: Mr. Butters?

24 MR. BUTTERS: No, your Honor.

25 THE COURT: Thank you very much.

1 (Juror steps away from sidebar.)

2 THE COURT: Mr. Maldonado.

3 COURTROOM DEPUTY CLERK URSO: Juror No. 28.

4 (Juror approaches sidebar.)

5 THE COURT: Good morning.

6 JUROR: Good.

7 THE COURT: You told us that you were or somebody in
8 your family had been convicted of a crime.

9 JUROR: Father, brother, cousins. My father and my
10 little brother, yeah.

11 THE COURT: I'm sorry. Your father has been?

12 JUROR: Yeah. My brother.

13 THE COURT: And your little brother?

14 JUROR: Younger brother.

15 THE COURT: And what was your father convicted of?

16 JUROR: For drugs.

17 THE COURT: And your brother?

18 JUROR: Violated parole. He had a shotgun.

19 THE COURT: What got him probation in the first
20 place?

21 JUROR: He robbed somebody, a few friends, something
22 like that.

23 THE COURT: How long ago was all this?

24 JUROR: Probably three, four, five years ago now.

25 THE COURT: Would that experience with your family

1 make it in any way difficult for you to be a fair juror?

2 JUROR: Nope.

3 MR. WORTMANN: Were all these incidents with the
4 Boston Police Department?

5 JUROR: Yeah.

6 MR. WORTMANN: You also said you had cousins who had
7 been --

8 JUROR: Yes.

9 MR. WORTMANN: What were -- what was their problem?

10 JUROR: That was like years back, too. Drugs and
11 guns, basically.

12 MR. WORTMANN: Okay. So, any problems -- any
13 concerns about enforcing the drug laws?

14 JUROR: No.

15 MR. WORTMANN: You think they're okay?

16 JUROR: Yeah.

17 MR. WORTMANN: Okay.

18 THE COURT: Mr. Butters, any questions?

19 MR. BUTTERS: No, your Honor.

20 THE COURT: Thank you very much.

21 (Juror steps away from sidebar.)

22 THE COURT: Nobody wants him excused for cause?

23 MR. WORTMANN: Your Honor, I am going to ask you to
24 excuse him for cause just because of the number of --

25 THE COURT: I'll put a question mark.

1 Mr. Harrington.

2 (Juror approaches sidebar.)

3 THE COURT: Good morning.

4 JUROR: Good morning.

5 THE COURT: Mr. Harrington, you indicated both that
6 somebody in your family had been convicted of a crime and,
7 also, you had feelings about the drug laws. Tell me about the
8 second piece.

9 JUROR: Well, both my brothers were hooked on heroin
10 and one of them was shot and killed when he was buying heroin.
11 It was a long time ago, and they were both in jail. Just -- I
12 think I could be okay, but I'm not sure.

13 THE COURT: The second brother, what happened to the
14 second brother?

15 JUROR: I had a younger brother that was on heroin,
16 too, and he was arrested and sent to jail for possession of
17 heroin.

18 THE COURT: How long ago was that?

19 JUROR: Long time ago.

20 THE COURT: So, he's been straight?

21 JUROR: They're both deceased.

22 THE COURT: So, he died also, but not --

23 JUROR: His was a car accident.

24 THE COURT: Unrelated?

25 JUROR: Unrelated to drugs, yes.

1 THE COURT: You also indicated that you had feelings
2 about the drug laws?

3 JUROR: Well, I don't know if I have feelings about
4 the law itself. I just have tough feelings to do with drugs.

5 THE COURT: Do you think you could sit on this case?

6 JUROR: I guess I could. I don't know what kind of
7 feelings it would bring up, but I'm not really sure.

8 THE COURT: If you would like to be excused, you
9 could be excused.

10 JUROR: I do want to be excused. I think it would
11 make it -- would be simpler, I think.

12 THE COURT: No objection?

13 MR. WORTMANN: No objection.

14 THE COURT: Please go back to the jury lounge. Thank
15 you very much.

16 (Juror steps away from sidebar.)

17 THE COURT: Ms. Orben.

18 COURTROOM DEPUTY CLERK URSO: Juror No. 35.

19 (Juror approaches sidebar.)

20 THE COURT: Good morning.

21 JUROR: Good morning.

22 THE COURT: I think you indicated that somebody in
23 your family had been convicted of a crime?

24 JUROR: Mm-hmm. Back in the 70s my husband was
25 convicted of embezzlement. He didn't serve any time. It was

1 compensation. There was no jury trial.

2 THE COURT: Would that experience -- is he still
3 alive?

4 JUROR: He is.

5 THE COURT: You're still together?

6 JUROR: We are. He's a good man who made a stupid
7 mistake, but I have another more recent. My adult daughter in
8 Maine about five years ago had an OUI, served a little bit of
9 time, but she has a pending case up in Maine again for another
10 OUI.

11 THE COURT: Would these experiences of your husband
12 and your children make it in any way difficult for you to be a
13 fair juror in this case?

14 JUROR: I don't think so.

15 THE COURT: Mr. Butters, any questions?

16 MR. BUTTERS: Did anybody go to trial? Did your
17 husband go to trial?

18 JUROR: No. He pled guilty.

19 MR. BUTTERS: You think you could be fair with the
20 police and judge them --

21 JUROR: I think I could, yeah, I do. I mean -- like
22 I said, he was a good man. He did a stupid mistake. He
23 admitted it and it's in the past. We're still together 43
24 years later.

25 MR. WORTMANN: 43 years later.

1 Ma'am, if I could ask you, do you think both your
2 husband and your daughter were treated fairly by the system
3 and fairly by the police?

4 JUROR: Yes, I do.

5 MR. BUTTERS: Can I ask?

6 THE COURT: Of course.

7 MR. BUTTERS: Do you think if somebody gets arrested,
8 they probably did it?

9 JUROR: No.

10 MR. BUTTERS: Okay.

11 THE COURT: Thank you.

12 MR. BUTTERS: Stupid question.

13 JUROR: Stupid question.

14 MR. BUTTERS: Thank you.

15 (Juror steps away from sidebar.)

16 THE COURT: Mr. Dube.

17 COURTROOM DEPUTY CLERK URSO: Juror No. 36.

18 (Juror approaches sidebar.)

19 THE COURT: Good morning.

20 JUROR: Good morning.

21 THE COURT: You answered yes to a question about
22 race. Can you explain it?

23 JUROR: I'm hate everybody, all minorities. Why I
24 don't know. It's just the way I feel.

25 THE COURT: Does it have to do with wanting not to be

1 a juror?

2 JUROR: Yes, it is. How can I be -- I hate them all.
3 If they're convicted, they should be thrown in jail for the
4 rest of their life. I've always felt that way.

5 THE COURT: I will excuse you from further service in
6 this courtroom, but there is another courtroom and another
7 Judge that will probably need your services.

8 (Juror steps away from sidebar.)

9 THE COURT: Mr. Strauss.

10 COURTROOM DEPUTY CLERK URSO: 37.

11 (Juror approaches sidebar.)

12 THE COURT: Good morning. How are you?

13 JUROR: Good morning, Judge. I'm well. Thank you.

14 THE COURT: You indicated both a relationship with
15 law enforcement and crime?

16 JUROR: Yes. The crime first. My son when he was a
17 kid was arrested for transporting alcohol. That was 20 years
18 ago. And the other --

19 THE COURT: Did anything happen other than the
20 arrest?

21 JUROR: Continued without a finding. There was a
22 court appearance and a good talking to.

23 THE COURT: By you?

24 JUROR: And by everybody that came in contact with
25 him.

1 THE COURT: And he actually listened?

2 JUROR: Well, maybe. And I'm a retired federal
3 investigator.

4 THE COURT: For what agency?

5 JUROR: Office of Personnel Management. And before
6 that the defense department.

7 THE COURT: Would your experience as a retired
8 investigator make it in any way difficult for you to be a fair
9 juror?

10 JUROR: I don't know.

11 THE COURT: Why is that?

12 JUROR: Having seen both sides of testimony and
13 representations, I just don't know.

14 THE COURT: I would think that you would be in a
15 perfect position to know with your experience having seen both
16 sides.

17 JUROR: Probably could.

18 THE COURT: Mr. Butters, any questions?

19 MR. BUTTERS: But are you hesitant because of your
20 experience that a lot of people lie?

21 JUROR: That's certainly part of it.

22 MR. BUTTERS: What's the other part?

23 JUROR: I just -- because of that, mainly I just
24 don't know that I could give a fair interpretation of
25 testimony.

1 THE COURT: Because you would act as investigator?

2 JUROR: Yeah.

3 MR. BUTTERS: Well --

4 JUROR: It's a hard habit to break.

5 MR. BUTTERS: Skeptical?

6 JUROR: Yeah.

7 MR. BUTTERS: Like St. Thomas.

8 Let me -- these are all going to be police officers
9 who testify in this case. Would you be more inclined to
10 believe them?

11 JUROR: Not necessarily. I don't think that would
12 enter into it, no.

13 MR. WORTMANN: So, it's really talking about just
14 your experiences, analyzing facts and assessing credibility?

15 JUROR: Yeah.

16 MR. WORTMANN: And you do that honestly?

17 JUROR: Yes.

18 MR. WORTMANN: And try to be as fair as you can?

19 JUROR: Yes.

20 THE COURT: Okay. Thank you.

21 JUROR: Thank you.

22 (Juror steps away from sidebar.)

23 THE COURT: Mr. Bachand.

24 (Juror approaches sidebar.)

25 THE COURT: Good morning.

1 JUROR: How you doing?

2 THE COURT: You told me that you or somebody in your
3 family had been convicted of a crime in the past?

4 JUROR: Yeah. Coke and crack, my brother-in-laws.

5 THE COURT: I'm sorry?

6 JUROR: My brother-in-laws. I --

7 THE COURT: Two of them?

8 JUROR: Two of them.

9 THE COURT: What were they convicted of?

10 JUROR: One was coke and one was crack.

11 THE COURT: Would that experience make it in any way
12 difficult for you to be fair in this case?

13 JUROR: It could.

14 THE COURT: Any objection to excusing Mr. Bachand?

15 MR. WORTMANN: No.

16 THE COURT: Please go back to the jury lounge.

17 (Juror steps away from sidebar.)

18 MR. WORTMANN: Your Honor, one issue I would like you
19 to revisit, Mr. Maldonado.

20 THE COURT: Maldonado?

21 MR. WORTMANN: Yes.

22 THE COURT: I will excuse him. You don't object, do
23 you?

24 MR. BUTTERS: I like the guy. I don't object.

25 THE COURT: Among other things, he's difficult to

1 understand and I think he's not all there.

2 MR. BUTTERS: I agree. 28?

3 COURTROOM DEPUTY CLERK URSO: 28. He's for cause.

4 Where is he? Can I let him go now?

5 THE COURT: Now, we need 12, plus two, 14. Plus ten,
6 24. Plus six. 30 jurors. And we have one, two, three, four,
7 five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 16,
8 17, 18, 19, 20, 21, 22, three, four, five, six, seven, eight,
9 nine, ten. So, going down to Juror No. 35, we have 30 jurors.
10 So, we have some left over beyond that.

11 MR. WORTMANN: We need 36, don't we, your Honor? We
12 need --

13 THE COURT: 14, plus ten is 24, plus six.

14 MR. WORTMANN: Is 30, plus two for the challenges on
15 the alternates.

16 THE COURT: That's right.

17 MR. WORTMANN: 32.

18 THE COURT: 32. So, it's -- we go to 39. We have
19 one extra juror and that's it.

20 MR. WORTMANN: Good.

21 THE COURT: If everybody uses all challenges. Are
22 you ready to exercise challenges?

23 MR. WORTMANN: Could we have a few minutes?

24 THE COURT: You can have a few. Jim is looking for
25 the jurors.

1 MR. BUTTERS: May I ask you something?

2 So, are we starting with these people?

3 THE COURT: You can challenge anybody you want,
4 except I don't think it makes much sense to challenge No. 40
5 because we won't reach 40 in the worst case scenario.

6 COURTROOM DEPUTY CLERK URSO: It's the whole group,
7 not just in the box.

8 MR. BUTTERS: I got you.

9 (Pause.)

10 MR. WORTMANN: Your Honor, I wonder -- before we do
11 this, I notice that we have one juror who is from Martha's
12 Vineyard. I wonder if that transportation is going to create
13 a problem.

14 THE COURT: She didn't ask to be excused.

15 MR. WORTMANN: Well --

16 THE COURT: Maybe she has a flat in Boston.

17 MR. WORTMANN: Perhaps, if she's taking a ferry every
18 day --

19 THE COURT: Which juror is it?

20 MR. WORTMANN: Juror 29, your Honor.

21 THE COURT: We can always excuse her.

22 COURTROOM DEPUTY CLERK URSO: If she asks for a hotel
23 room, they do provide a hotel room for two days.

24 THE COURT: She can do a hotel?

25 COURTROOM DEPUTY CLERK URSO: They --

1 MR. WORTMANN: Maybe we should just, you know, try to
2 find out.

3 THE COURT: If she's chosen, then we'll --

4 MR. WORTMANN: Okay.

5 THE COURT: In the meantime, one for Mr. Wortmann.

6 MR. BUTTERS: Before we do that, my client would like
7 to object to the make-up of the jury because there are no
8 black people and there's one Hispanic person. This looks like
9 my high school graduating class in Iowa.

10 THE COURT: Your objection is noted.

11 The last time we impaneled, we had six African-
12 Americans and a small jury and I don't know how --

13 MR. BUTTERS: I know. I know.

14 THE COURT: It's very strange. Okay.

15 MR. WORTMANN: I challenge Juror No. 4, Joshua Roth.

16 THE COURT: Two for you, Mr. Butters.

17 MR. BUTTERS: I would challenge No. 1 and No. 14.

18 THE COURT: And 14?

19 MR. BUTTERS: Yes.

20 THE COURT: One for you, Mr. Butters -- Mr. Wortmann.

21 MR. WORTMANN: Juror 17, your Honor.

22 THE COURT: Mr. Butters.

23 MR. BUTTERS: Juror No. 11 and Juror No. 26.

24 THE COURT: I'm sorry?

25 MR. BUTTERS: 26.

1 THE COURT: Mr. Butters, you did say 26, right?

2 MR. BUTTERS: 26.

3 THE COURT: Okay.

4 MR. WORTMANN: Juror 23, your Honor.

5 THE COURT: Mr. Butters.

6 MR. BUTTERS: Did you say 17?

7 MR. WORTMANN: I did.

8 MR. BUTTERS: No. 25.

9 THE COURT: 25 you challenged the last time around.

10 MR. BUTTERS: That was 26.

11 THE COURT: You challenged 26 before?

12 COURTROOM DEPUTY CLERK URSO: Yes. Now 25. And what
13 else did you say?

14 MR. BUTTERS: That's all I said so far.

15 COURTROOM DEPUTY CLERK URSO: I can barely hear you.

16 (Discussion off the record.)

17 MR. BUTTERS: We're content.

18 MR. WORTMANN: Your Honor, Juror 24.

19 THE COURT: Anybody else? You got two more.

20 MR. WORTMANN: Juror 29, your Honor. And, your
21 Honor, I would like to challenge Juror 27. I'm not sure if
22 he's the Hispanic male. If he is, I'll say it's because of
23 the proximity of his address to the place where the offense
24 took place, which is on Washington Street in Boston.

25 THE COURT: He was at work. The objection is

1 overruled. If you want to challenge him, you go right ahead.

2 MR. WORTMANN: Yes.

3 THE COURT: So, 27.

4 Now we start the next one with Mr. Butters. You have
5 one challenge for any alternate, but let me go through first
6 to see what we have here.

7 Juror No. 3 on the list is one. Five on the list is
8 two. Seven on the list is three. Eight, four. Nine, five.
9 Ten, six. 13, seven. 15, eight. 16, nine. 18, ten. 19,
10 11. 20, 12. So, the next two jurors, that is No. 21, 22, 30
11 and 32 are the likely alternates. That is, anybody beyond 32
12 is not likely to be chosen.

13 MR. BUTTERS: You said 20, 22?

14 THE COURT: I finished --

15 COURTROOM DEPUTY CLERK URSO: 20, 21.

16 THE COURT: The next four that would be eligible are
17 21, 22, 30 and 32.

18 MR. BUTTERS: I'm content.

19 MR. WORTMANN: I'm content, your Honor.

20 THE COURT: Okay. So, Alternate 1 will be No. 21 and
21 Alternate 2 will be 22, and the rest will be excused. Thank
22 you very much.

23 MR. WORTMANN: Thank you, your Honor.

24 MR. BUTTERS: Thank you.

25 THE COURT: We'll take a brief recess when you finish

1 this.

2 (End of sidebar conference.)

3 THE COURT: Members of the jury, we have, as usual,
4 tried to do this as quickly as possible to inconvenience you
5 as little as possible. These are the jurors who will serve as
6 the jurors in this trial:

7 Mr. Ostrov, you will be Juror No. 1. Mr. Bouchie,
8 Juror No. 2. Ms. Ma, No. 3. Ms. Gath, No. 4. Mr. Evans, No.
9 5. Mr. Dunn will be Juror No. 6. Mr. Lombardi, No. 7. Ms.
10 Libby, No. 8. Ms. Bertolino, No. 9. Ms. Danilchuk, No. 10.
11 Ms. Gately, No. 11. Ms. Bagley, No. 12. And Mr. Oliveira,
12 No. 13. And Mr. Tolleson, No. 14.

13 Those whose names I did not call are excused from
14 further service in this courtroom. I thank you very much for
15 your patience. Do not leave without getting a ticket from Ms.
16 Urso and, please, all of you now will get your ticket. Just
17 wait for a moment to get your ticket and go back to the second
18 floor to the jury lounge. We have another trial waiting for
19 you.

20 While Ms. Urso is doing that, Mr. Ostrov, would you
21 kindly move down to the first seat and the rest of you on the
22 first row follow and the rest of you -- those of you in the
23 third row take the seat that you're -- okay.

24 (Discussion off the record.)

25 THE COURT: I think what we will do is take a brief

1 recess. Ms. Urso will show you where the jury room is and
2 hopefully we can start in five or ten minutes. There are
3 bathrooms up there. I think there's even some coffee. So,
4 just a quick sip and we'll get going in about ten minutes.

5 COURTROOM DEPUTY CLERK URSO: All rise, please.

6 (Jury excused.)

7 THE FOLLOWING TAKES PLACE OUTSIDE OF THE PRESENCE OF THE JURY:

8 THE COURT: How long will you be?

9 MR. WORTMANN: 20 minutes, your Honor.

10 THE COURT: Are you opening now or later?

11 MR. BUTTERS: Now.

12 THE COURT: How long will you be?

13 MR. BUTTERS: Ten.

14 THE COURT: Okay. We'll all take a recess.

15 (Recess taken.)

16 (Jury enters courtroom.)

17 THE COURT: You may be seated and the jurors should
18 kindly stand up for purposes of swearing.

19 COURTROOM DEPUTY CLERK URSO: Can I please ask you
20 all to raise your right hand, please.

21 (Jury sworn.)

22 THE COURT: Please be seated.

23 Members of the jury, a trial goes in stages. We have
24 finished the first stage, which was the selection of you to
25 decide this case, to hear the evidence and decide the case.

1 We will now come to the second stage, which is called
2 the opening statements of counsel. Mr. Wortmann, who is the
3 prosecutor and who has to persuade you, convince you of the
4 evidence, will go first and he will now outline to you what
5 the evidence is that he expects to present.

6 Mr. Butters has an opportunity to open now or later.
7 He has chosen to open now, and his job, in essence, is to --
8 well, he will do it, but I don't know that he will have any
9 evidence. He can say to the government, as I told you
10 earlier, You accused me, so you prove it.

11 After counsel finish the opening statements, we will
12 hear the witnesses, today and tomorrow probably, and that,
13 again, goes in order. Mr. Wortmann who will call these
14 witnesses will conduct the direct examinations, followed by
15 Mr. Butters' cross-examination. Then we can go back for one
16 more round of redirect and recross and then the witness will
17 be excused.

18 When we finish hearing all of the testimony and
19 receiving all of the testimony, there may be some written
20 evidence or photographs, or whatever, then counsel can again
21 address you, but this time it's different. Now you have heard
22 the evidence and this time they will argue the evidence to
23 you. They will sum up the evidence to you to try to persuade
24 you of their respective positions and when they finish that, I
25 will instruct you on the law and then you will retire to

1 deliberate your verdict and ultimately return your verdict to
2 the Court.

3 We, as I told you earlier, anticipate that that last
4 bit will occur on Wednesday and, hopefully, if everybody gets
5 here on time tomorrow, we will be able to start at 9 o'clock
6 and just go through and get it done.

7 So, we will now begin with the opening statement by
8 Mr. Wortmann on behalf of the government.

9 MR. WORTMANN: Thank you, your Honor.

10 GOVERNMENT'S OPENING STATEMENT:

11 MR. WORTMANN: Ladies and gentlemen, we're going to
12 be spending some time together, but this is really one of the
13 only -- well, two times I actually get to address you
14 directly. And so, let me first introduce myself to you as a
15 jury.

16 My name is John Wortmann. I'm an Assistant United
17 States Attorney, and over the next few days I'll have the
18 privilege of representing the United States of America in the
19 prosecution of its claims against Barry Spencer.

20 THE COURT: Excuse me, Mr. Wortmann.

21 Could you pull back the lectern just a bit so I can
22 hear you. Thank you.

23 MR. WORTMANN: I can, your Honor.

24 Over the next few days -- and you've heard the Judge
25 give the schedule and we hope to be finished by Wednesday --

1 the government is going to prove to you and prove to you
2 beyond a reasonable doubt that Barry Spencer, the man in the
3 green suit right there, is a drug dealer, a fellow who dealt
4 cocaine, along with another man named Michael Morrison, and
5 that Mr. Spencer conspired, that is agreed with Mr. Morrison
6 to sell crack cocaine, that he aided and abetted, that he
7 helped him sell crack cocaine, all on the streets of Egleston
8 Square in Roxbury on March 20th, 2013.

9 On that date you'll learn that it was Mr. Spencer
10 who, upon being approached by an undercover officer named
11 Richard Casallas, who you'll hear during the course of the
12 case. He was the one who spoke to the undercover officer,
13 immediately agreed to sell crack cocaine, that he was the
14 person who then walked away to get his buddy, Mr. Morrison,
15 and when Mr. Morrison came back, he let Mr. Morrison do the
16 dirty work, which is the actual exchange, while he stood close
17 to the street looking up and forth, making sure there were no
18 police officers coming on the scene.

19 They finished the deal and it was Mr. Spencer who
20 asked the undercover for his telephone number on the chance
21 that they might do some deals in the future.

22 And, you know, after you've heard all the evidence,
23 you've heard the testimony, you've watched the video that was
24 done of the identification procedure, you've seen the drugs,
25 you've heard from the chemist, you've heard from the

1 surveillance officers, all the officers around on the street,
2 we're going to come back and ask you to return a verdict of
3 guilty on Count 1, that on March 20 Barry Spencer conspired
4 with Mr. Morrison to sell crack cocaine or cocaine base, as
5 it's called; and, secondly, that he aided and abetted
6 Morrison's sale of the actual distribution, because, ladies
7 and gentlemen, I submit to you that's what the evidence is
8 going to show.

9 Now, all that is easy to say. I'm not going to sit
10 here and say anything, but the real question and only question
11 that's important for you is how are we going to do that?

12 Well, you already know from what Judge Zobel has
13 said, it won't be based on anything the lawyers said because
14 anything I say, anything Mr. Butters says, it's not evidence.
15 No, ladies and gentlemen. The government is going to prove
16 its case to you from one place and one place only. From that
17 witness stand right there, where you'll hear from the
18 undercover agent who dealt with Mr. Spencer face to face on
19 that blustery day out on Egleston Square; from his supervisor,
20 Sergeant Detective Keenan, who will tell you that he saw Mr.
21 Spencer, that he knew Mr. Spencer from prior interactions on
22 the street, that he went -- drove around and saw them dealing
23 with one another, saw Morrison out there; from other
24 undercover officers, including Detective Greg Walsh, who took
25 video of an identification procedure that was done right after

1 the buy took place of Morrison and Spencer talking to and
2 being identified by two other police officers; and by a
3 forensic scientist from the state police laboratory.

4 What I would like to do over the next few minutes is
5 to summarize the evidence in a little more detail, again, not
6 because what I say is evidence. You know it's not, but in the
7 hopes that it will help you understand the evidence a little
8 bit better as it comes in.

9 Now, in this case, because of the nature of the
10 charges, to do this I need to at least talk to you very
11 briefly about the law and I do that with a little bit of sense
12 of trepidation, because understand one thing. When it comes
13 to the law, Judge Zobel is the boss. So, if there's anything
14 I say that sounds in any way different from what she says, you
15 know who to listen to. You listen to her.

16 There's two kinds of charges. The first charge in
17 this case is conspiracy to distribute cocaine base, a/k/a
18 crack cocaine. Sounds complicated. It's not. A conspiracy
19 is just an agreement, either expressed like, Hey, let's go out
20 and do this, or implied when two people start working together
21 to do something illegal, and here to sell crack cocaine. It
22 doesn't have to be fancy. It doesn't have to be written. It
23 doesn't even have to be expressed, as I've said. And use your
24 common sense, which is what you'll be doing throughout your
25 service as a jury.

1 Drug dealers don't sign contracts to go out and sell
2 drugs. They don't advertise their businesses. They don't put
3 tombstones in The Wall Street Journal. This is an illegal,
4 secretive business and the last thing they want to do is draw
5 attention to themselves.

6 The agreement doesn't have to be for cash. Nobody
7 has to do anything in furtherance of it. All they have to do
8 is say, Hey, there was an agreement, based on the conduct and
9 based on what they did, and that's how we're going to prove
10 the conspiracy in this case, based on what Mr. Spencer did
11 when he immediately said, yeah, he's on. He's ready to sell
12 drugs and asked the undercover how much he wanted, went out
13 and got Mr. Morrison, who then did the deal, and they walked
14 off together.

15 There is a second charge in this case that's
16 completely independent and stands on its own. And so, at the
17 end of the trial, you'll have to deal with each one of these
18 charges, and that is aiding and abetting the distribution of
19 crack cocaine, cocaine base, and unlike the charge of
20 conspiracy, it requires more than just an agreement. So, let
21 me tell you just a little bit about that, remembering that if
22 you hear anything different from Judge Zobel, go with her.

23 The thing that -- the first thing we have to prove on
24 an aiding and abetting charge is that there was, in fact, a
25 drug distribution. That is, the transfer of -- knowing

1 transfer of a controlled substance from one person to another,
2 and it doesn't have to be for money, but in this case you'll
3 find out that it was, and our drug laws make it a crime for
4 someone to go ahead and sell or give or transfer knowingly
5 crack cocaine or any other controlled substance to somebody
6 else.

7 But the law does much more than that. It also says
8 that people who knowingly assist others to distribute drugs
9 are equally culpable, are equally guilty, even, as in this
10 case, if they never put their hands on the drugs and never put
11 their hands on the money, and what we will have to show is,
12 one, that Barry Spencer provided substantial assistance to Mr.
13 Morrison, the person who actually gave the drugs to him, to
14 the undercover, sold the drugs to the undercover, that he did
15 it knowingly and intending for the drug deal to be able to
16 happen, and that the deal actually took place, and with that
17 in mind, let me tell you about what the evidence is you're
18 going to hear in this case.

19 In the spring of 2013, the Drug Control Unit from
20 Boston Police Department's District D-4 -- and that covers the
21 South End, some areas of downtown. They were involved in a
22 longer-term operation in certain neighborhoods in Roxbury,
23 including the Egleston Square area. The operation was to
24 focus on drug activity in these particular neighborhoods,
25 using an undercover officer, a police officer who disguises

1 himself and tries to make himself look like a drug user, to go
2 out and buy drugs in these neighborhoods.

3 Now, the remarkable thing is that they were just --
4 the officers would just go out and walk around and go up and
5 talk to people and say things like, "Are you on," which is
6 drug parlance. "Are you selling drugs?" Or, you know, "Is
7 anybody around?" But the language in this case was -- Officer
8 Casallas is walking up to Barry Spencer and saying, "Are you
9 on?" And he'll tell you what that meant.

10 Because the thing that's even more remarkable is
11 that, as in this case on March 20, 2013, they had some success
12 in doing it, buying drugs from a total stranger based on
13 walking up to him, \$20 for the crack cocaine, street deal.

14 So, on March 20, 2013, what was the plan? Well, the
15 plan was that the District D-4 unit, together with another
16 unit in Roxbury known as B-2, were going to go out into
17 Egleston Square and send Officer Casallas out in an undercover
18 capacity -- and he's been in undercover school and he teaches
19 at undercover courses -- to see if he could buy drugs. There
20 was no target identified for that day when they drove down
21 there. It was, as I said, in the course of this longer-term
22 operation that they were doing it.

23 And the first witness you're going to hear from is
24 Sergeant Detective Donald Keenan, who runs the D-4 Drug
25 Control Unit, you know, long-term experience, made hundreds of

1 buys himself, and he'll tell you basically that they met.
2 They decided where they were going to go. They decided who
3 was going to be the undercover, and he prepared the undercover
4 officer by doing two things:

5 One, he gives him Boston Police Department pre-
6 recorded buy money, which is copied; and, secondly, he gives
7 him a transmitter, an undercover device that's designed to
8 pick up signals and transmit them to a receiver in Sergeant
9 Detective Keenan's car. It doesn't record and it doesn't
10 record for the reasons that under state law -- and this was a
11 case down in -- as a state investigation, there's a two-party
12 consent rule. So, they couldn't record it.

13 And so, after doing these things, Keenan and
14 Casallas, the undercover, drove into Egleston Square. There
15 were a number of other officers in the area, including Officer
16 Greg Walsh, Detective Greg Walsh, who you're going to hear
17 about, because he was in a van and he had with him a video
18 camera and his job was to do his best to try to videotape
19 whatever it was that he would be able to videotape, because --
20 are there problems in deals like this? You can probably
21 imagine them because you don't know where the deal is going to
22 take place. You don't know who the deal is going to take
23 place with.

24 And it's called -- to make matters a little more
25 complicated, the operation in the investigation that day was

1 called a "buy/walk," and you'll learn what that was, but it's
2 pretty much what it sounds like. You buy from a drug dealer
3 and instead of arresting him right away, you let him walk.

4 Why would they do that? Because it's an ongoing
5 investigation and if you start arresting people right away,
6 the dealers in the areas will know that there are undercover
7 officers in the area and, more importantly, they'll know who
8 the undercovers officers are and their ability to do these
9 operations.

10 Now, what that creates is a complication and a
11 complication that the police dealt with, and that's they have
12 to make sure they know who they're dealing with. So, if they
13 make a buy, they got a few minutes to make sure that they stop
14 the person, they identify them, and they do it in a way so
15 that the guy doesn't know that the reason he's stopped is
16 because the police know he just sold drugs to somebody.

17 Now, here it's made a little bit easier because as
18 Keenan and Casallas drove in, they went past the bus stop at
19 1990 Columbus Avenue and standing there looking like --
20 apparently, like he was waiting for the bus, although you'll
21 find out and the evidence will show that wasn't the case at
22 all -- was Barry Spencer and, as I've indicated to you, Keenan
23 knew Barry Spencer from prior involvement in the street. And
24 he said to Casallas, I know that guy. He's Barry Spencer.
25 Once you get out, you ought to go up and talk to him and see

1 if you can -- if you have any success.

2 Keenan then drove Casallas around to the other side
3 of Egleston Square where Columbus and Washington -- to where
4 Walnut Park is, and Casallas got out and while Keenan was
5 driving around the neighborhood on roving surveillance and
6 while Detective Walsh was driving around on roving
7 surveillance, he walked back and he approached Barry Spencer
8 at the bus stop, and he said, as I've indicated earlier, "You
9 on?" I.e., are you selling drugs? And Mr. Spencer, you will
10 hear, said, "I'm on all the time, and I'm really glad you
11 showed up. It's a slow day. What do you want?" He said, "I
12 want" -- "I got \$20. I want crack cocaine."

13 And they're standing there alone in the bus stop --
14 and you'll see pictures of the bus stop -- and Spencer said,
15 "Come on, follow me." And he took a couple of steps and then
16 he said, "Wait a minute, stop. I'll be right back." And
17 while they were doing that, Keenan did his first loop around
18 and saw the two of them talking, and four, five minutes later
19 Mr. Keenan (sic) comes back with his friend Mr. Morrison and
20 says, "He's going to take care of you." And Morrison comes up
21 to Mr. Casallas, to Officer Casallas. They make the exchange,
22 \$20 for one bag of crack cocaine.

23 And Mr. Spencer, as I said, is standing watching the
24 cars, looking up and down just to make sure, watching for
25 police cars with the blue and white "Boston Police

1 Department," so they can know, because, as I told you, this is
2 a secretive, illegal little business and they don't want other
3 people to know what's going on.

4 So, the deal is finished. Mr. Spencer says to
5 Officer Casallas, "Hey, can I have your phone number in case
6 we can do something in the future?" Gives him his phone
7 number. Casallas thanks him, puts the drugs in his pocket,
8 and they split off going in different directions. Officer
9 Casallas goes up to Walnut Park and Walnut Avenue, sends out
10 the message that it's a done deal over the phone. Tells
11 Keenan. Keenan picks him up. They put out on the radio who
12 the two guys are.

13 In the meantime, Mr. Morrison and Mr. Spencer are
14 walking the other way down right into Egleston Square, with
15 Officer Walsh following them, and he follows them all the way
16 to the traffic light at Columbus Avenue and Washington Street.
17 He gets held up by the traffic. They both turn off.

18 And, in the meantime, in order to do that
19 identification procedure that we talked about, Sergeant
20 Detective Keenan gets two officers from another unit to stop
21 Mr. Spencer and Mr. Morrison and get their identification, and
22 as the officers are doing this, two things happen:

23 One is Officer Walsh comes up with his video camera
24 and he ends up videotaping the identification procedure and
25 there's the picture of Barry Spencer out on the street as he's

1 talking to those police officers doing this identification.

2 And at the same time, they drive by -- Keenan drives
3 by with Officer Casallas in the back seat leaning down and
4 when they get to the corner, he pokes his head up, tinted
5 windows, and says, "Yeah, those are the two guys." Keenan
6 will tell you that those are the two guys he saw with Casallas
7 at the bus stop. Walsh will tell you that those were the two
8 guys that he saw at the bus stop.

9 And they finish the video. The other cops finish the
10 identification procedure, and they went back -- the deal was
11 done. The identification procedure was complete. They went
12 back to prepare their reports and to log in the drugs.
13 Officer Casallas looked at the drugs, and it's a small little
14 rock of crack cocaine, and you'll learn that it was basically
15 crushed in the testing process. So, now it looks sort of like
16 sand.

17 He turned the drugs over to Keenan, who also
18 inspected them, identified them as crack cocaine. They were
19 then given to Officer Sean Flaherty, another officer who
20 you'll hear from, who took the drugs and he put them in this
21 drug envelope with his handwriting on it and they ended up
22 getting stamped with the number from the case on it, did a
23 field test, put it in the drug locker at District B-2, and
24 from there it goes and gets sent to the BPD drug laboratory,
25 which, in turn, sends it out to the State Police Crime

1 Laboratory, which right now -- and let me make one thing
2 perfectly clear -- has nothing to do with the J.P. lab, has
3 nothing to do with a chemist named Annie Dookhan, completely
4 separate, has absolutely nothing to do and, in fact, these
5 drugs were analyzed by a woman named Claire Rimkus, who holds
6 a master's degree in forensic sciences from Boston University
7 School of Medicine. She performed a whole battery of tests on
8 them, and she will tell you that the drugs are .15 grams of
9 cocaine base, also known as crack cocaine.

10 So, that's the evidence. Aiding and abetting: How
11 did the deal take place? Barry Spencer set it up.
12 Conspiracy: These fellows were not waiting for the bus stop.
13 They were waiting for a drug customer and that drug customer
14 just happened to be Richard Casallas.

15 I thank you for your attention. I appreciate your
16 service and when we come back to speak again, I'll be asking
17 you to return guilty pleas on both counts of the indictment.
18 Thank you.

19 THE COURT: Mr. Butters.

20 MR. BUTTERS: Yes, your Honor.

21 DEFENDANT'S OPENING STATEMENT:

22 MR. BUTTERS: Good morning, ladies and gentlemen. My
23 name is Tom Butters. I represent Barry Spencer, whose been
24 accused by the United States Government of participating, not
25 selling. He didn't sell anything, but he's accused of

1 participating in a sale of a \$20 bag of crack cocaine and when
2 you look inside the bag, when you take it back to the jury
3 room, it's almost infinitesimal, but the entire force of the
4 United States Government and the Boston Police Department has
5 been brought down upon Barry Spencer, and you're here because
6 of a -- because somebody named Morrison sold a \$20 bag of
7 crack cocaine to an undercover officer. Mr. Spencer did not
8 sell anything on that day.

9 And my brother in his opening said that there were
10 some complications with this case. There are a lot of
11 complications with this case. You would think that when you
12 have the United States Government and the entire Boston Police
13 Department at your service, that you would get an open-and-
14 shut case. That's what you deserve. That's what should have
15 been done that day, but despite all the technology that we
16 have in America and even in Boston, we have more technology
17 than almost anybody, no tape recording, no videotape of the
18 transaction.

19 Apparently we have a transmitter. They call it a KEL
20 set, and the KEL set transmits what's said between people.
21 It's a microphone and it transmits what's said, but nobody
22 will tell you anything about what was said between Mr. Spencer
23 and the undercover officer because it was unintelligible. So,
24 we don't know whether Mr. Spencer said, Hey, how are you? or
25 we don't know whether the police officer said, you know, Do

1 you have some crack cocaine you can sell me today? or we don't
2 know whether, for example, Mr. Spencer said, Oh, why don't
3 you -- you know, there's some other guys around here. You
4 know, this is a street corner in Boston that's heavily
5 traveled, and why don't you go talk to him. So, we have no
6 idea what was said except from the undercover officer, when it
7 would have been simple.

8 We have tape recordings. We have transmitters that
9 work. We have a stationary area. They went to Egleston
10 Square because they wanted to target people who were selling
11 drugs in Egleston Square. There are a lot of buildings in
12 Egleston Square. You'll see from the photographs that they
13 could have set up a stationary videotape from anywhere in that
14 -- on that corner, because that's where they expected the drug
15 deal to go down and they had been out on the streets for
16 months doing the same thing, but there's no videotape of the
17 transaction. The only videotape is that at some point when
18 Mr. Spencer -- who, by the way, lives in the neighborhood.
19 So, he's not, you know, going out and away from his home.
20 He's at his home, standing at a bus stop, and that's where
21 he's supposed to be, is around his home.

22 The other man, Mr. Morrison, I don't believe that he
23 was in his neighborhood, number one; and, number two, there
24 was another buy that happened a month and a half later where
25 the same undercover officer went out on the same street corner

1 and bought even less crack cocaine, but he got gypped because
2 there was only -- it was a \$40 bag, but there was less weight.
3 And where was Mr. Spencer? He wasn't there that day. There's
4 no allegation that he was there that day.

5 And so, despite all the technology, what you have is
6 you have to rely on the word of one police officer, and nobody
7 else saw the transaction go down. Every police officer that
8 will come in except for the undercover officer will say, Gee,
9 I didn't see it. I didn't see. I didn't hear anything. I
10 mean, I saw them on the street corner. Well, that's because
11 he lives near the street corner, Mr. Spencer.

12 So, at the end of the day, it's up to you to decide
13 whether you're convinced. Are you convinced that Mr. Spencer
14 sold crack cocaine to an undercover Boston Police officer?

15 And when you go into the jury room, you have to say,
16 Wow. Well, here's the evidence that I have. Wouldn't it have
17 been nice if there was more evidence and we really knew what
18 happened.

19 And I would submit, ladies and gentlemen, when this
20 case is all over, which is going to be quickly, thankfully for
21 you, you are going to have doubts about what Mr. Spencer's
22 role was in this case, if any, and we will ask you to return a
23 verdict of not guilty. Thank you.

24 THE COURT: Members of the jury -- Mr. Wortmann, can
25 you call your witness, please. In the meantime -- first of

1 all, we stretch. So you can get up and stretch.

2 (Stretch break.)

3 THE COURT: We will do this regularly. Not just for
4 your benefit, but for mine, too.

5 MR. BUTTERS: May we approach momentarily, your
6 Honor? Mr. Wortmann and I, my client?

7 THE COURT: Do we have to?

8 MR. BUTTERS: Yes.

9 **SIDE BAR CONFERENCE:**

10 MR. BUTTERS: I'm sorry.

11 THE COURT: I want to have no sidebars.

12 MR. BUTTERS: Okay. Hopefully, this will be the last
13 one.

14 Mr. Wortmann is going to play or wants to play a
15 videotape. There was a suppression motion related to the
16 videotape, but there's -- on the videotape there's -- the Gang
17 Unit are the guys who identified Mr. Spencer and Mr. Morrison
18 after the fact, and we would like an instruction -- well,
19 first of all, Mr. Spencer objects and --

20 THE COURT: Is he on it?

21 MR. BUTTERS: What?

22 THE COURT: Is he shown on it?

23 MR. BUTTERS: Yes. And the Gang Unit members with
24 their jackets on are shown on it.

25 First of all, he wants to renew his objection to the

1 videotape being played at all; and, secondly, we would like
2 the Court to instruct the jury that the fact that these guys
3 had the "Gang Unit" insignia on is completely unrelated to
4 this case. They simply needed some bodies out there. I think
5 Mr. Wortmann --

6 MR. WORTMANN: I have absolutely no trouble with you
7 giving that instruction.

8 THE COURT: Okay.

9 MR. BUTTERS: That they shouldn't make any adverse --

10 THE COURT: Is it clear that what they were there on
11 is a Gang Unit --

12 MR. BUTTERS: No, they aren't.

13 MR. WORTMANN: You can instruct them those are just
14 the officers who got this investigation and had nothing to do
15 with gangs, period. You can disregard that.

16 THE COURT: Okay.

17 MR. BUTTERS: And they should --

18 THE COURT: These are the officers, not the --

19 MR. BUTTERS: Right. Right.

20 MR. WORTMANN: Your Honor, were you going to give the
21 CSI instruction?

22 THE COURT: I was about to do that.

23 (End of sidebar conference.)

24 DET. SRGT. DONALD KEENAN, SWORN.

25 COURTROOM DEPUTY CLERK URSO: Sir, can I ask you to

1 please state your name, spelling your last name for the
2 record, please.

3 SRGТ. DET. KEENAN: Donald Keenan, K-e-e-n-a-n.

4 COURTROOM DEPUTY CLERK URСO: Thank you.

5 THE COURT: Hold it one second.

6 Mr. Ostrov, one of your jobs is to pour the water and
7 hand it down. Or you can have that job if you would like. So
8 you can keep it and hand out cups.

9 Let me explain a couple of things to you.

10 As you know from some of the questions I've asked
11 before, we care deeply about the way the evidence is presented
12 in a courtroom and we operate under a very complicated and
13 large set of rules.

14 I ask you, please, not to try to Google or get any
15 information about this case or any aspect of this case because
16 we would like you to decide it based entirely on the evidence
17 that is presented to you. Anything you hear about the case
18 outside the courtroom is not being subjected to the same rules
19 and it can skew your perception of actually what happened or
20 what you think may have happened or could have happened. So,
21 just please accept the evidence as it is presented by the
22 parties, the examination and cross-examination, and don't try
23 to get any information about the case from any other source or
24 even pieces of the case. So, please don't Google.

25 Second, to the extent that some of you are addicted

1 to television mysteries and police stories, put those aside.
2 A lawsuit doesn't work the way television does. We don't have
3 the kind of forensic ideas and evidence and machines that
4 suddenly give you the answer. That is not the way it works.
5 So, put that aside as well.

6 And we don't have, for those of you old enough to
7 remember Perry Mason, the ability of having somebody step
8 forward, Now, you did it, didn't you, sir? You know, that's
9 not the way it happened either.

10 Please listen carefully to the questions and listen
11 carefully to the answers and decide the case based on what you
12 hear in the courtroom, all of which is subject to the rules
13 that, if necessary, I will begin to explain to you in the
14 course of this short trial, okay?

15 So, you now may begin to question the witness.

16 MR. WORTMANN: Thank you, your Honor.

17 And, your Honor, may I ask Ms. Urso to put the
18 document camera up.

19 DIRECT EXAMINATION

20 BY MR. WORTMANN:

21 Q. Mr. Keenan, what do you do for a living?

22 A. I'm a sergeant detective in the Boston Police
23 Department.

24 THE COURT: Now we're losing you. Thank you.

25 A. I'm a sergeant detective in the Boston Police

1 Department.

2 Q. How long have you been with the Boston Police
3 Department, sir?

4 A. Since 1997.

5 Q. So, approximately 14, 15 years?

6 A. Yes.

7 Q. 17 years?

8 A. 17 years.

9 Q. Excuse my math.

10 And how long have you been a sergeant detective?

11 A. Since 2007.

12 Q. And could you tell the jury, please, where you are
13 currently assigned?

14 A. Yes. I'm assigned to the Drug Control Unit out of
15 District D-4 in the City of Boston. D-4 covers the areas of
16 the South End, lower Roxbury, Back Bay and Fenway.

17 Q. And as the sergeant detective assigned to the District 4
18 Drug Control Unit, what do you do?

19 A. I supervise a squad of officers to investigate drug
20 activity in the city.

21 Q. Now, are the seven years that you spent on the D-4 Drug
22 Control Unit your only experience in BPD's Drug Control Units?

23 A. No. In approximately 2010 -- approximately 2010 I was
24 assigned to the D-4 Drug Control Unit as a supervisor. Prior
25 to that I was supervisor in the D-18, which covers Mattapan,

1 Hyde Park and Roslindale from 2007 to 2010. Prior to that,
2 from 2005 to 2007 I was a patrol officer in the Drug Control
3 Unit in the downtown area. From 1997 to 2005 I was a police
4 officer in District 1, which covers the downtown area.

5 Q. So, you've been assigned to the Drug Control Unit since
6 2005?

7 A. Correct.

8 Q. Approximately nine years?

9 A. Yes.

10 Q. And during that time have you had the opportunity to
11 make seizures of drugs?

12 A. Yes, I have.

13 Q. In the hundreds?

14 A. Yes.

15 Q. Have you ever acted in an undercover capacity buying
16 drugs?

17 A. I have.

18 Q. Could you explain to the jury, Sergeant Detective
19 Keenan, what that involves?

20 A. An undercover officer in the Drug Control Unit, his job
21 is to go out and purchase drugs in the city. Specifically,
22 you're provided money, a KEL device. A KEL device is just a
23 transmitter the undercover officer would carry with him. He's
24 sent out into an area, whether it's a targeted person or area
25 in general or specific areas in the city where we just go out

1 and attempt to purchase drugs from people where we get
2 complaints of drug dealing.

3 Q. Very often those people are total strangers?

4 A. Yes.

5 Q. And can you tell the jury approximately how many
6 undercover buys you've made over the course of your career?

7 A. I've made hundreds of undercover drug buys.

8 Q. And in the course of your work in the Drug Control
9 Units, have you become familiar with a substance known as
10 cocaine base?

11 A. Yes.

12 Q. What is cocaine base?

13 A. Cocaine base is crack cocaine. It's a smokable form of
14 cocaine.

15 Q. Is that one of the drugs that you've had the opportunity
16 to seize and buy over the course of your career?

17 A. Yes.

18 Q. Now, have you ever been called to identify it in the
19 field?

20 A. I have.

21 Q. Can you describe for the jury how you do that?

22 A. Crack cocaine is -- it's a hard white substance, rock-
23 like, and in the City of Boston it's sold usually on the
24 street in small plastic bags, probably the size of a pebble.
25 Usually you buy them for \$20 a rock on the street. The larger

1 the rock, obviously, the more money it cost.

2 Q. Does it have a distinctive appearance?

3 A. It does. Like I said, it's an off-white, usually, you
4 know, a rock-like substance.

5 Q. And how many times have you been called upon to identify
6 it in the field?

7 A. Hundreds of times.

8 Q. Now, earlier you said that the District 4 covers areas
9 in the downtown and areas of the South End. Is the work of
10 the District 4 Drug Control Unit limited to D-4?

11 A. No.

12 Q. And where else do you work and why?

13 A. We're Boston police officers. That's our primary
14 assignment day to day, but we often get called to other parts
15 of the city by my commander or other supervisors in the city
16 to go make undercover drug purchases in the city. My squad is
17 primarily made up of undercover officers.

18 Q. And if I could focus you in on the late winter and
19 spring of 2013. Were you involved in an operation outside of
20 District D-4?

21 A. Yes.

22 Q. What was the nature of that investigation?

23 A. It was an operation to send undercover officers out to
24 purchase drugs in what we call a buy/walk operation. We
25 attempt to buy drugs. We buy drugs from people. We'd

1 identify that person soon after and we let them walk or let
2 them go from there after they're identified. At the end of
3 the operation, we would seek warrants for them and arrest the
4 people that we purchased drugs from.

5 Q. And were there any particular areas in which this
6 operation focused on?

7 A. Yeah, the B-2 area, Egleston Square area, H Block area,
8 which is Humboldt Ave, down to Washington Street. Most of the
9 B-2 area on that side of Washington Street.

10 Q. And this operation had a name?

11 A. Operation H.

12 Q. And --

13 MR. BUTTERS: I'm sorry, I missed that.

14 THE WITNESS: Operation H, as in the letter H.

15 MR. BUTTERS: As in heroin?

16 THE WITNESS: As in heroin. H block. A lot of the
17 streets are named -- start with the letter H in the area and
18 they call it H Block.

19 Q. So, that's referred to as a geographic focus as opposed
20 to specific focus on a type of drug?

21 A. Exactly.

22 Q. Now, during this investigation, were there specific
23 investigative procedures that you employed in order to further
24 the investigation?

25 A. Yes.

1 Q. And can you describe those for us, please?

2 A. Prior to going out, we have a briefing. Most of the
3 time in this operation it would be Area B-2. The undercover
4 officer would be decided on there, which undercover officer we
5 would be using that day. The undercover officer is provided
6 with money which is previously recorded. I photocopy the
7 money prior to giving it to the undercover officer. He's also
8 provided with a KEL device, which I mentioned earlier. A KEL
9 device is a transmitter which is hidden on the officer. It's
10 a receiver that I -- there's a receiver that picks up that KEL
11 device.

12 Q. Let me ask you -- let me stop you there, if I could,
13 sir, Sergeant Detective Keenan, and ask you about the KEL
14 device. First, does the KEL device record?

15 A. We don't record, no.

16 Q. Can you explain to the jury why not?

17 MR. BUTTERS: Objection, your Honor.

18 THE COURT: Why do we need to know that?

19 MR. WORTMANN: Well, I think there were issues raised
20 in the opening as to what investigative techniques that they
21 used and what investigative techniques they didn't use.

22 THE COURT: Well, they didn't record for a reason.
23 The objection is sustained.

24 MR. BUTTERS: Thank you, your Honor.

25 Q. Who has the receiver?

1 A. I have the receiver in my vehicle.

2 Q. And what's the purpose of the KEL device?

3 A. Merely -- the purpose is for officer safety. Sending
4 the officers out there to purchase drugs, obviously, it's a
5 dangerous situation dealing with drug dealers. And so, it's
6 for us to hear or attempt to hear what is going on and get
7 help to the officer if things start to get -- if the officer
8 is in a dangerous situation.

9 Q. Now, do you also have access to video recording devices
10 that can be hidden on somebody's person?

11 A. We do.

12 Q. Did you use those in the Operation H?

13 A. No.

14 Q. Why not?

15 A. Operation H, it was an operation where we were asked to
16 go into another part of the city that we're not familiar with,
17 which is good in a sense, where the people going to sell the
18 drugs to us didn't know us, but also puts us in a situation
19 where we're walking up to strangers, people we didn't know,
20 and ask them to purchase drugs. This could lead to a lot of
21 the drug dealers actually searching the undercover officers to
22 find hidden equipment, you know, transmitters or camera
23 equipment that the undercover officer, perhaps, would have on
24 him.

25 Q. Have you had it happen to you as an undercover officer?

1 A. I have.

2 Q. Have other undercover officers that you're supervising
3 had that happen to them?

4 A. Yes.

5 Q. So, those weren't used?

6 A. The body camera was not used.

7 Q. Now, in the course of this operation, did you have
8 specific targets when you went out on the street?

9 A. Generally, no.

10 Q. When you went into a particular location like Egleston
11 Square, did you have a particular house or storefront or
12 address where you believe that drug transactions were going to
13 occur?

14 A. Not specifically.

15 Q. So, what would the undercover then do?

16 A. The undercover officer would be deployed in that area.
17 He would walk down and engage people in an attempt to purchase
18 drugs from people in that area.

19 Q. Didn't know who was going to be selling?

20 A. That's correct.

21 Q. Didn't know where the selling was going to take place?

22 A. Correct.

23 Q. All right. Now, earlier you mentioned -- you used the
24 term, "buy/walk"?

25 A. Yes.

1 Q. Can you just make clear for the jury what that term
2 means and could you contrast to something called "buy/bust"?

3 A. Yes. Like I said, a buy/walk is when an undercover
4 purchases drugs from somebody and that person is allowed to
5 leave the area without being arrested that day. The reason we
6 do that is to keep an operation going. In this operation we
7 were -- our task was to go there and throughout the
8 neighborhood attempt to purchase drugs from as many people who
9 were selling out there.

10 Another tactic we use is a buy/bust, which is -- again,
11 the officer is provided with money and the drug dealer -- once
12 the drugs are in hand, is separated from the drug dealer, the
13 drug dealer would be arrested soon after.

14 Q. So --

15 A. "Soon after," meaning like pretty much immediately.

16 Q. What would have happened to your ongoing investigation
17 if you had started arresting people right after the drug deal
18 took place?

19 A. Well, obviously, they would have known that there were
20 other Drug Unit -- other officers in this area conducting drug
21 investigations and the word around in the neighborhood would
22 have -- it would have been over fairly quickly if we arrested
23 the people immediately after we bought the drugs.

24 Q. So, you didn't do that?

25 A. We did not.

1 Q. Does the buy/walk technique create issues regarding
2 identification?

3 A. Yes.

4 Q. Can you describe those for the jury, please?

5 A. Well, obviously, during a buy/bust, you hand the guy the
6 money, he gives you the drugs, and he's arrested right after.
7 That's a great way to identify the person who you just gave
8 the money to because you're going to match that money up with
9 the serial numbers that you photocopied.

10 On a buy/walk they're going to be allowed to leave the
11 area. So, you're going to have -- you need to stop them and
12 have any of the surveillance officers and the undercover
13 officer identify the person who they just purchased the drugs
14 from, and we do that a number of ways.

15 Q. How did you do it in this investigation?

16 A. Soon after drugs were purchased, the individuals that
17 sold the drugs were stopped by Boston police officers, where
18 they -- the officers conducted an FIO, field interrogation,
19 where they get the information, the identifying information
20 from the person that they stopped.

21 Q. So, they actually give their names?

22 A. Yes.

23 Q. And was it your practice while this procedure was taking
24 place to do anything?

25 A. Yes. We would attempt in this operation to also -- or

1 in -- most of the time in a buy/walk to video record the stop
2 and we did in this instance.

3 Q. Now, could you explain to the jury --

4 THE COURT: Excuse me. I think we need to stop until
5 tomorrow.

6 Members of the jury, you are now excused until
7 tomorrow morning at 9:00. Please leave your notebooks on your
8 chairs, putting on the outside your name and the number. It's
9 already done?

10 COURTROOM DEPUTY CLERK URSO: No. I just said to put
11 their number.

12 THE COURT: So, Mr. Ostrov, you're No. 1. Ms. Gath,
13 you're No. 4. Ms. Libby, you're No. 8. Ms. Bagley, you're
14 No. 12, and the rest of you can figure out who you are.

15 We are not going to read your notebooks, but we just
16 want to collect them overnight, keep them overnight for you
17 and you will get them back in the morning.

18 Please do not talk about the case while you're home
19 or wherever you are. Just do your ordinary business, because
20 even talking about it also changes the evidence in your head
21 to some extent. So, just please don't.

22 If you are all here promptly at 9:00, then we can
23 start promptly at 9:00 and if you're not, then we'll have to
24 wait for you. So, it's important that you all be here.

25 MR. WORTMANN: Your Honor, could we approach just for

1 one second before the jury goes out?

2 THE COURT: Why do we have to have all these bench
3 conferences?

4 MR. WORTMANN: Sorry.

5 **SIDE BAR CONFERENCE:**

6 MR. WORTMANN: Forgive me, your Honor. You may have
7 done this and if you did, I apologize, but I'm not sure the
8 jury has been told that they cannot talk about the case even
9 amongst themselves.

10 THE COURT: I just did. I told them not to talk
11 about it because it changes --

12 MR. WORTMANN: Even amongst themselves?

13 THE COURT: I did.

14 MR. WORTMANN: Okay. Sorry.

15 (End of sidebar conference.)

16 THE COURT: All right. You are excused until 9
17 o'clock tomorrow morning, and I thank you very much.

18 (Jury excused.)

19 THE COURT: Court is in recess until 9:00 tomorrow
20 morning.

21 (Adjourned, 1:04 p.m.)

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1 C E R T I F I C A T

2 I, Catherine A. Handel, Official Court Reporter of
3 the United States District Court, do hereby certify that the
4 foregoing transcript, from Page 1 to Page 102, constitutes to
5 the best of my skill and ability a true and accurate
6 transcription of my stenotype notes taken in the matter of
7 Criminal Action No. 13-10196-RWZ, United States of America versus
8 Barry Spencer.

9

10

11

August 17, 2014
Date

/s/Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR

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